



# EMPLOYMENT TRIBUNALS

**Claimant:** Haech Lockwood

**Respondents:** (1) Cheshire and Wirral NHS Foundation Trust  
(2) Brett Williamson  
(3) Yvette Dunn  
(4) Philip Spencer  
(5) Mike Farnan  
(6) Jane Graves  
(7) Emma Holden

**Heard at:** Liverpool

**On:** 8 9 10 11 12 15 and  
16 September (in  
chambers) 2025

**Before:** Employment Judge Benson  
Mr J Murdie  
Mr A Clarke

## REPRESENTATION:

**Claimant:** Miss C Widdett – Counsel  
**Respondent:** Ms R White – Counsel

# RESERVED JUDGMENT

The unanimous decision of the Tribunal is that all complaints of harassment related to gender reassignment are not well-founded and are dismissed.

# REASONS

## Claims and Issues

1. This is a complaint brought by the claimant for harassment related to the protected characteristic of gender reassignment, pursuant to section 26 Equality Act 2010. The claimant identifies as non binary. The claimant has

brought additional claims, but only their claims numbered 2401211/2024 and 2407178/2024 are considered at this hearing.

2. The allegations of unwanted conduct they rely upon are events between 4 October 2023 and 31 January 2024, which for the most part relate to the named individual respondents using incorrect pronouns in communications or using the claimant's deadname. The claim is also brought against the claimant's employer. The specific allegations were agreed and are set out in the list of issues below, which we have amended slightly as discussed during the hearing. The claimant does not suggest that any of the respondents' conduct was with the purpose of causing distress or offence to them. The claimant therefore relies upon the effect that the unwanted conduct has had. They rely upon the conduct individually and cumulatively as causing the environment prescribed by section 26(1)(b). Most facts are agreed and are recorded in documents to which we had access.

### **Agreed List of Issues**

#### 3. Time Limits

- 3.1 Have the Claimant's claims of gender reassignment discrimination been brought within three months of the acts complained of? (EqA 2010, ss123(1)(a) & 140B).
- 3.2 In respect of any complaints which are out of time, do they form part of a continuing act, taken together with acts which are in time? (EqA 2010, s123(3)(a)). The incident said to have occurred on 3rd January 2024, is in time in first claim.
- 3.3 If the complaints were not submitted in time, would it be 'just and equitable' to extend time? (EqA 2010, s 123(1)(b))

#### 4. Harassment -S27 EqA 2010

Was the Claimant subject to the following conduct/treatment?

##### Claim 1

- 4.1 On 4 October 2023, Jane Graves, ICT, misgendered the Claimant in a ServiceDesk ticket, referring to them as "her." [Incident A]
- 4.2 On 10 October 2023, deadname reappearing on MailCentral, despite prior resolution and grievance outcomes. [Incident B]
- 4.3 On 10 October 2023, misgendering by Nurse at vaccination clinic, despite "Non Binary" being stated on consent form. [Incident C]

4.4 On 11 October 2023, Brett Williams, ICT staff member, misgendered the Claimant in a call log and email, referring to them as “her” despite prior complaints and clearly stated pronouns. [Incident D]

4.5 On 12 October 2023, Yvette Dunn, High Intensity Therapist, misgendered the Claimant during a face-to-face conversation, referring to them as “she” and “Helen”. [Incident E]

4.6 On 17 October 2023, Yvette Dunn sent an email denying misgendering, placing responsibility on the Claimant, and failing to apologise. [Incident F]

4.7 On 3 January 2024, Emma Holden, HR, was involved in sending employment contracts containing the Claimant’s deadname, despite prior grievance outcomes and awareness of the correct name. [Incident G]

#### Claim 2

4.8 On 10 January 2024, the Administration Team allocated a service user to the Claimant despite a clear ‘Case Alert’ stating the client “would prefer to see a female therapist.” [Incident H]

4.9 On 31 January 2024, Yvette Dunn failed to acknowledge the Claimant in a corridor interaction, responding with a brief “hi” and turning away. [Incident I]

5. Was that conduct 'related to' the protected characteristic of gender reassignment. The claimant relies upon their non binary gender?
6. Was such conduct as is proved unwanted?
7. Did that conduct have the purpose or effect of violating the Claimant’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In deciding whether conduct has that effect, the Tribunal will consider the perception of the Claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
8. What declarations, if any, as to the rights of the Claimant and Respondent would be appropriate? (EqA 2010, s 124(a))
9. What compensation, if any, should the Respondent be ordered to pay to the Claimant? (EqA 2010, s 124(2)(b))
10. What recommendations, if any, would be appropriate? (EqA 2010, s 124(2)(c))

11. In relying upon section 7 Equality Act 2010, the claimant must show that any allegations of harassment were related to the protected characteristic of gender reassignment. In this case the claimant relies upon their non binary status. This was an issue identified at the preliminary hearing before Employment Judge Shergill and upon which submissions were made by Miss Widdett, on behalf of the claimant. The respondents have taken a “do not admit” stance upon this issue.

### **Anonymisation order application**

12. The claimant made an application for an anonymisation order at the outset of the hearing. This application was refused. Oral reasons were provided at the time.

### **Evidence and Submissions**

13. Evidence was heard from the claimant and from each of the individual respondents. Brett Williamson: a Senior ICT Services Support Analyst, Yvette Dunn, a High Intensity CBT Therapist, Philip Spencer, the Head of ICT, Mike Farnan, ICT delivery manager, Jane Graves, an Information Support Technician, and Emma Holden, Assistant HR Business Partner. In addition, evidence was heard from James Sturney who considered the claimant's Stage 2 grievance, Karen Phillips the Head of Workplace Wellbeing, and Catherine De Zwaan, Head of Patient and Carer experience who considered the Stage 3 grievance. A witness statement was provided for Amanda Stein but she did not attend and as such was not cross examined.
14. An agreed hearing bundle consisting of 747 pages was provided, and we were directed to certain documents within that bundle during the course of the hearing. It was agreed that we would not consider the remedy bundle at liability stage.
15. Both counsel provided written submissions, supplemented by oral submissions.

### **Findings of Fact**

16. The claimant applied for their role with the Trust in the name Heather Lockwood. They noted on their application that they were non binary. They commenced work on 5 November 2021. They remain employed by the respondent. On 14 December 2023, with the support of their manager, the claimant arranged for an email to be sent to those in the Primary Care Psychological Service within the Trust advising that the claimant wished to be known as Haech Lockwood, that they identified as Trans/gender fluid and did not identify as male or female, that they wished to be known as Haech as

using their deadname caused gender dysmorphia and that the claimant's pronouns were: they/them.

17. Having received confirmation that their name had been changed by deed poll, on 10 January 2022 the claimant notified their manager of the change and asked that their name be changed on the first respondent's systems. The manager directed the claimant to let ICT know about the changes they required to the email and ICT systems and the claimant did this by a service desk request on 17 January 2022. They asked that their name be changed on the email and network. There was no reference to different pronouns being required or the reason for the change.
18. All requests received by the service desk are initially noted as "low urgency", unless the request related to a building or critical systems being off line or a system being broken. A name change did not fall into this category. Name changes were fairly common, normally for marriage reasons. The claimant chased this request on 24 February when they explained the reason for the name change request. ICT responded that day and advised the claimant that their email would be forwarded to the service desk who would be asked that it be dealt with as soon as possible.
19. Changes to the systems were put into effect. The Trust's email and network system was complex and relied upon both internal and external systems. Some changes required updates to individual systems, but ICT put in place the necessary changes. In late March 2022 the claimant noticed that their deadname continued to appear in the Microsoft Teams appointments in their outlook calendar and when sending emails. They raised this problem with the ICT team and explained the distress it was causing them. As the ICT team believed they had already made the changes to resolve these problems, it was agreed that a complete reboot of the laptop would be required for the claimant and that was arranged to take place a few days later.
20. The reboot was put on hold, as on 2 April 2022 the claimant was signed off as unable to work by reason of "stress and Covid".
21. The claimant submitted an informal grievance to their manager on 5 April 2022. Arrangements were made to meet with the claimant when they returned from sickness. The claimant agreed to an Occupational Health appointment.
22. On 12 April 2022, the claimant received a letter from the Occupational Health Department with an appointment, addressed to "Other Heather Lockwood". This caused the claimant further distress.
23. The matter was taken up by Ms Philips, the Head of Workforce Wellbeing and an outcome was agreed upon a positive way forward to support the claimant and others who were transgender.

24. A number of actions were identified by Ms Phillips to improve the service offered to non binary staff. These are set out in an email to the claimant dated 22 April 2022. (page 265). This included adding Mx into the title list on the respondent's database; speaking to the Database providers to see if a field could be included for pronouns to be added into referral forms and ensuring members of the team undertake the Rainbow Pledge training, in addition to their EDI mandatory training. The letter included an apology.

#### Informal grievance

25. The claimant met with Janet Foster, the claimant's Clinical Lead, on 27 April to discuss their informal grievance of 5 April. This related to issues with the ICT, concerns about a lack of support from management and the incorrect name on the letter from the OH department. The outcome was by provided by way of a letter that day. In that outcome, Ms Foster provided an explanation from Mr Farnan of the ICT team why the name change had not been updated across all systems. Mr Farnan reported that a new Trust profile had now been created on the claimant's device in their new name and that this would remove all traces of their previous Microsoft account. The final step to alter the claimant's profile needed to be completed on the respondent's premises and it was intended that when the claimant returned to work, at an agreed time a Senior IT technician would remotely make the changes and assist the claimant in signing back into all accounts.

26. Ms Foster apologised on behalf of the ICT team for the errors which had occurred and confirmed that the claimant had expressed she was happy with the plan going forward. The claimant however wanted a formal written apology from the ICT team that acknowledged the harm this issue had caused them and a plan of intended actions that the ICT team would put in place to ensure this didn't happen again. Ms Foster asked that the claimant accept her letter as the formal written apology on behalf of the ICT team and the Trust. Ms Foster also apologised to the claimant as their manager, if the claimant had felt there was a lack of support from her when they were having issues with the ICT department. Ms Foster confirmed that she had in fact been in contact with the ICT team but had not kept the claimant informed. The claimant asked for a formal written apology from her and an acknowledgment of the harm that had occurred. Ms Foster asked that her letter be taken as an apology for any harm that the claimant felt had been caused. The claimant also requested a demonstration of improvements. The outcome acknowledged that the issues with the OH/Workplace Wellbeing service had been addressed directly. The letter provided a real and heartfelt acknowledgment of the difficulties the claimant had faced and a full and genuine apology.

#### Formal Grievance

27. The claimant was not satisfied with the outcome and on 3 May 2022 raised a formal grievance. That was considered by James Sturney. The grievance raised the same complaints but identified that the claimant did not accept the apologies in the informal grievance outcome as apologies. They wanted, amongst other outcomes a formal written apology from the ICT team (and not on their behalf) and acknowledgment of the harm caused by its failures. They wanted a demonstration of understanding of the harm caused in that the ICT team did not recognise this issue as the serious matter it was for the claimant and for others or their associated responsibilities.
28. In respect of their management team, the claimant wanted a formal acknowledgment of the lack of support and communication received and an apology in writing, together with a demonstration of improvements to avoid the recurrence of this kind of failing in the future.
29. Mr Sturney met with the claimant on 20 May 2022 to discuss their grievance. The claimant reiterated the outcomes they wanted from the process.
30. Following that meeting, on 24 May 2022 Ms Foster sent a further apology to the claimant. Again, this was a supportive and positive letter and explained that she had organised a programme of presentations by the Trust's LGBT + network for her team in June 2022. These covered transgender issues.
31. On 6 July 2022, following a meeting with the claimant, Mr Sturney wrote to them confirming the outcome. That was an understanding and positive letter. It focused upon the claimant and the identified steps which had or were being taken to alleviate the distress which the unintentional actions of the ICT, management, and Wellbeing teams had caused the claimant. Solutions were put forward to seek to ensure the ICT issues were resolved, and written apologies had been provided by Phil Spencer the Head of ICT and Janet Foster, though the claimant did not feel that Ms Foster's apology was adequate, or her letter was in the right tone. The outcome also identified positive steps to be taken in respect of training by the Trust's Phil Makin, the Equality Diversity and Inclusion Officer.
32. The claimant returned to work on 30 August 2022. The changes to their profile on their laptop had been completed 24 August 2022.
33. The claimant continued to have other periods of absence between August 2022 and October 2023. In December 2023 they reduced their hours of work and were issued with a new contract of employment. That contract was in the name of Haech Lockwood. They carried out much of their work from home after that date.

#### Second Formal Grievance

34. The series of incidents which the claimant relies upon in these proceedings as allegations of harassment occurred between 4 October 2023 and 31 January 2024. They were the substance of a Dignity at Work complaint initially raised on 10 October 2023 but added to during the following months. Those complaints were considered by Catherine De Zwaan. A full investigation was undertaken, and Ms De Zwaan provided her written outcome on 3 July 2024, having met with the claimant to provide it in person first. Reference to the outcome of the investigation in respect of each of the allegations below is reference to that grievance.

**Incident A: 4 October 2023: Misgendering C in Service Desk ticket referring to “her”**

35. On 5 July 2023, the claimant contacted the ICT service desk by phone to report an issue with their system. The call was taken by Jane Graves. She logged the call as a ticket and the ticket was automatically sent to the claimant by email. That ticket used the pronoun “her” to describe the claimant. It said:

*“Customer would like to be able to use her Daily Task toolbar in Normal, but settings is not able to be changed from Minimised”*

36. The email was seen by the claimant on 4 October 2023 upon their return to work after illness. The claimant asked that the ticket be reopened and the toolbar issue be looked into. The claimant noted at the bottom of the message that this was an act of misgendering which they found distressing that the correct pronouns “they/their” be used in the future.

37. Upon receiving the message, Ms Graves immediately messaged the claimant and apologised for the mistake and any distress she had caused. She went on to arrange to discuss the toolbar issue with the claimant. Ms Graves corrected the “her” to “their” on the service ticket and added a note on it of the claimant’s preferred pronouns so that the next person who spoke with the claimant about the issue would be aware of them.

38. The claimant advised their manager, Mr Woodward that they were considering submitting a Dignity at Work complaint.

39. The claimant raised this issue as part of their grievance. Following an investigation, Ms De Zwaan concluded that: Ms Graves didn’t know what the claimants pronouns were when she took the call and the claimant did not tell her. Ms Graves did not ask either. The staff details were provided by the NHS national ESR system which did not have a pronoun field. The ICT desk was very busy by nature and its staff were under additional pressure at that time. This had also prevented them from undertaking optional transgender awareness training. Ms Graves had not acted intentionally in using the claimant’s incorrect pronoun and a reasonable attempt had been made to

remedy the situation at time, an apology was provided, and the service ticket updated to reflect the claimant's pronouns.

40. We accept that Ms De Zwaan's conclusions are an accurate summary of the reasons for the mistake.

**Incident B: 10 October 2023: Deadname reappearing in Mail Central**

41. The claimant and others in the Trust use a system called Mail Central to create letters which are later sent out to patients in the post. On 10 October 2023, while creating a letter, the claimant's deadname email address appeared next to their correct email address. The claimant was distressed by this as they had understood that all ICT issues had been resolved and raised their concern with their line manager, Mr Woodward straight away. The claimant accepts that Mr Woodward was understanding and supportive and said he would take it up with ICT. A week later he reported to the claimant that the issue had been resolved and that he would make enquiries as to why it had happened.

42. This issue was investigated by Ms De Zwaan. Her conclusions were that when a full reboot of the claimant's laptop had occurred, the claimant had provided a list of all of the system and software they used for their job. That did not include the Mail Central system. The claimant wasn't asked if they used this software. As such the ICT team were not aware that the claimant used this system and as a result their name had not been changed on it in August 2022. There was no intention to cause offence to the claimant. The investigation found that the ICT system relied upon each staff member being aware of each piece of software they use for a comprehensive name change to be carried out and there was no full list of systems available to ICT. Although this hadn't been communicated to the claimant or staff at the time, Ms De Zwaan concluded that a reasonable attempt was undertaken by ICT to change the claimant's personal details by the Mail Central system but that was missed by ICT and the claimant.

43. We accept that at the time Ms De Zwaan's conclusions were what the ICT team understood were the reasons for the deadname email address appearing. At the hearing before us, Mr Spencer indicated that they had since discovered that the issue was in fact due to problem with the claimant's own laptop. This would make more sense as the claimant reported no problems in the 12 months since the reboot of their laptop.

**Incident C: 10 October 2023: Misgendering at Vaccination clinic**

44. The claimant attended an internal vaccination clinic for a flu/Covid vaccination on 10 October 2023. They noted within the form together with their name and

personal details that they were non binary. This was not spotted by the nurse delivering the vaccinations who was either Linda Carrington or Amanda Stein. The claimant has been unable to identify who spoke to them that day, but says that the nurse read the form and stated “OK so she is here for both a flu and vaccination clinic.” Neither of the nurses are individual respondents.

45. The claimant was distressed by the incident. They did not correct the nurse at the time, and considered that this was not a minor oversight, as they considered that the nurse should have spotted their non binary status. The form did not identify what pronouns the claimant preferred. The claimant reported the incident to their line manager and it was added to their grievance.
46. Ms De Zwaan conclusions included that the clinic was a drop in session and very busy and the staff were under pressure to complete several vaccinations in each session.
47. Further that the practice of the staff was to focus upon reading those parts of the form which were clinically relevant to ensure safe and effective administration of the vaccine. This had resulted in the gender field on the form not being properly acknowledged. Patient safety and effectiveness were given priority over patient experience. That the misgendering was not intentional and that both nurses acknowledged the distress caused and had both offered to make a full apology.
48. The Tribunal heard from Ms Carrington and read the statement from Ms Stein. It is clear that both were genuinely concerned at any offence caused to the claimant and as a result of having this issue drawn to their attention and the recommendations made by Ms De Zwaan, have changed their own practices to check pronouns as routine.

**Incident D: 11 October 2023: Misgendering in call log and email referring to “her” and “she”.**

49. On 11 October 2023, the claimant called the ICT service helpdesk and spoke to Mr Brett Williamson. During the call the claimant was cut off and BW put a note of the system saying:

*Unable to call Haech back as her call came through on CISCO jabber and us working remotely and the machine also showing as offline. If Haech calls back, we need to run the O365 installer on her machine and test the link she has been sent to join another organisation”.*

50. The claimant had understood following the call with Jane Graves that a note had been made on the system with their correct pronouns. In fact that note only appeared on the particular service ticket as there was no way of putting a pronoun field on the service desk system itself.

51. The claimant was distressed and disappointed at the further misgendering. They considered that no learning had taken place by the previous incidents with ICT and that matters needed to be taken further. They again referred it to their manager, who was supportive but frustrated for the claimant that it had happened again.
52. This issue was investigated by Ms De Zwaan whose conclusions included that neither the claimant nor Mr Williamson had asked each other what pronouns they would wish to be known by, that information about pronouns is not available to the ICT service desk as it is not information which is held in the national NHS employee database known as ESR, that Mr Williamson did not therefore know the claimant's preferred pronouns. That the claimant did not raise it with Mr Williamson at the time, and since becoming aware, Mr Williamson has changed his practice. That the very busy nature of the ICT service contributed to the incident, due to staff being under additional pressure at a time of staff shortages and that this had also hindered the team is being released for optional Transgender Awareness Training.
53. We accept this as summary of the reasons for the misgendering by Mr Williamson.
54. On 11 October the claimant submitted a Dignity At work complaint to their manager.

**Incident E:** 12 October 2023: Misgendering in face-to-face conversation referring to "she" and "Helen".

**Incident F:** 17 October 2023: Email from YD denying misgendering and failing to apologise

**Incident I:** 31 January 2024 YD failing to acknowledge C in corridor interaction responding with "hi" and turning away.

55. On 12 October 2023, Ms Dunn had a conversation with the claimant in the claimant's room. Ms Dunn was reporting a conversation she had had with one of the claimant's patients who was being handed back to the claimant following a period of absence. The conversation was friendly, and during that conversation, Ms Dunn relayed what the patient had said and in doing so used the word "she" in respect of the claimant and also referred to the patient calling the claimant "Helen."
56. We accept Yvette Dunn's evidence that she was quoting a patient. This is supported by her referring to the name "Helen", even though this was never the claimant's name. This is more likely to have been a mistake of the patient than Ms Dunn who was aware of the claimant's name and non binary gender. The claimant says that Ms Dunn did not need to use the pronoun "she" and in the context of the conversation should have changed the language to

ensure the claimant was not misgendered. The difficulty which we have in assessing whether that is correct or not is that the claimant has not told us exactly what words were said by Ms Dunn. As such we cannot make that assessment. The burden is upon the claimant and in the absence of such context, we cannot say whether this is correct.

57. The claimant did not alert Ms Dunn to their concern and the conversation was amicable. Ms Dunn left to go to her own room. Shortly afterwards the claimant emailed Ms Dunn to express their concerns and told Ms Dunn that she had misgendered them. The claimant commented that they understood it was entirely without malice and was likely to be a mistake. They explained that being misgendered was “like a gong going off in their head” and that was why they couldn’t mention it in the conversation. The claimant then proceeded to put paper across all but a few inches of the glass panel between the claimant’s and Ms Dunn’s room. Although the claimant says they did this because they felt unsafe, we are unclear what the claimant means by this. There was no action by Ms Dunn which would have reasonably led the claimant to be concerned about their safety. We believe the claimant had not considered that by doing so, it made Ms Dunn feel intimidated.
58. Ms Dunn responded by email, expressing confusion and saying that she did not believe she had misgendered the claimant and she was quoting the client, which was indicative as to why she had used the third person. She asked that the claimant raise this with her at the time in the future so that they could avoid any misunderstandings and avoid causing them any distress. The email ended with an offer to discuss matters further face to face and the email was signed off “warmest regards”. A week later the claimant forwarded the emails to their manager and asked that they be added to their Dignity at Work complaint and that they have his support. The claimant said that it was inappropriate to discuss the incident with Ms Dunn face to face, in view of the nature of her response.
59. Although Ms Widdett seeks to say that Ms Dunn was not credible, we disagree. The rules which Ms Dunn said she did not know in the grievance investigation were whether there was an obligation to change the pronouns to those preferred by the claimant when quoting another person, in this case the patient. It is clear to us that Ms Dunn and the claimant had different views and understandings about this and whether in not doing so, Ms Dunn had misgendered the claimant. Further when reading the quote on page 573 in Ms Dunn’s investigation meeting, it does not on our reading suggest that Ms Dunn is saying she read out clinical notes when speaking to the claimant, which she accepts that she did not, but is using that as an example of not knowing what the rules are and goes on to give another example being “repeating verbatim” what a client has said.

60. Ms Dunn's suggestion to mediate was rejected outright by the claimant who said in evidence that they did not want mediation, they just wanted the misgendering to stop.
61. Some three months later on 31 January 2024, the claimant arrived at the office and saw Ms Dunn speaking with her manager in the doorway of the manager's office. The claimant alleges that Ms Dunn failed to acknowledge them initially and when the claimant said good morning, Ms Dunn said "hi". and turned away. We do not accept that Ms Dunn was seeking to ignore the claimant as alleged. She responded when the claimant said good morning, while she was engaged in another conversation. Ms Dunn and the claimant saw each other intermittently when their days in the office coincided. They had seen each other between the incidents in October and this occasion and had interacted without problem.

**Incident G: 3 January 2024: Sending Employment contract with C's deadname**

62. On 3 January 2024, the claimant asked the respondent's HR department for a copy of their contract. The claimant was provided with copies of two contracts that day. The first was a copy of the contract they had signed on 27 September 2021, which was in the claimant's deadname, Heather Lockwood. The second was a later contract reflecting the claimant's reduction in hours in December 2022. That contract was in the name Haech Lockwood.
63. The receipt of the contract in the claimant's deadname caused them distress.
64. In the claimant's grievance, Ms De Zwaan concluded that this was a historical document that could not be changed as it reflected facts that were legally correct at the time. We were advised that this was in line with the respondent's document retention policy, which was not disputed.

**Incident H: 10 January 2024: Allocating service user to C despite Case Alert saying user "would prefer to see a female therapist"**

65. On 10 January 2024, the claimant was sent a request by their administration team from a patient for a review call. The claimant noted on the patient system that there was an alert that the patient would prefer to see a female therapist. The claimant checked the notes on the system to see if there was a record of the conversation with the patient, but there was not. The claimant emailed their line manager, Mr Woodward and the manager of the Administration Team to bring it to their attention and raise a complaint.
66. The claimant was caused distress and felt "invalidated" by this exchange.

67. Mr Woodward apologised for the allocation and arranged for the appointment to be cancelled and for the removal of that patient from the claimant's caseload and reallocated the patient to another colleague.
68. This issue was considered by Ms De Zwaan and following an investigation, she concluded that although the patient had requested a female therapist, the administration team had checked with the patient who had confirmed that they were happy to speak to a clinician of any gender in their one-off review call. That was why the patient had been allocated to the claimant. She found that apprehensions and anxieties existed in the working relationship between the administration team and the claimant and that had led to a breakdown in effective interaction and communication. In this situation we understood that Ms De Zwaan was referring to the administration team not putting a note of the call with the patient when they checked. Ms De Zwaan found that this was the main factor contributing to the incident and the reason why the claimant was unaware that the patient was happy to speak to a clinician of any gender. Further that the administration team were diligent in their booking of appointments, that individual patient needs are handled in a person – centred way and that clinicians were aware that the team would always contact a client if they mention specific requirements. She concluded that no misgendering had taken place as the client was happy to see a clinician of any gender for the one off Review call.
69. Ms De Zwaan made a number of recommendations in the outcome to Dignity at Work grievance including raising awareness of transgender issues, clarification of preferred pronouns by both parties at the outset of calls and appointments and personal details to be checked at the vaccinations clinic alongside those related to safety. These have to the most part been implemented where practical and possible to do.

## **The Law**

70. The Explanatory Notes to the Equality Act 2010 state that the Act has two main purposes - to harmonise discrimination law and to strengthen the law to support progress on equality. The Act was primarily a consolidating act and continued with the UK's implementation of the Employment Equality Directive (Directive 200/78/EC).

### Gender reassignment

71. Section 7 of the Equality Act 2010 states:
- (1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

(3) In relation to the protected characteristic of gender reassignment—

(a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;

(b) a reference to persons who share a protected characteristic is a reference to transsexual persons.

72. The only cases on section 7 to which we were referred were **Taylor V JLR Limited [Employment Tribunal] 1304471/2018** and **R(AA) v National Health Service Commissioning Board (NHS England) & others [2023] EWHC 43 (Admin)**

73. In **Taylor** which is a first instance decision of the Employment Tribunal Birmingham, the claimant said she was transgender and thought herself to be part of a spectrum, transitioning from the male to the female gender identity. She later said that in her case the precise term would be ‘gender fluid’ and that she had no plans for a surgical transition. The tribunal considered that the words in section 7 “proposing to undergo” were ambiguous and having been referred to extracts from Hansard setting out the Government’s position on the then Equality Bill, it deduced that *‘Parliament intended gender reassignment to be a spectrum moving away from birth sex, and that a person could be at any point on that spectrum. That would be so whether they described themselves as “non-binary” i.e. not at point A or point Z, “gender fluid” i.e. at different places between point A and point Z at different times, or “transitioning” i.e. moving from point A, but not necessarily ending at point Z, where A and Z are biological sex.’* The tribunal considered it beyond doubt that T was on that spectrum and was on a journey that would not be the same in any two cases. Accordingly, she had the protected characteristic of gender reassignment.

74. **R(AA) v NHS England** is a decision of the High Court concerning a judicial review application in respect of waiting times for gender identity and disorder services in the NHS. Each of the four claimants had taken steps to change attributes of their sex to transition from one biological sex to the other. Again, the relevant parts of that decision centred around the meaning of “proposing to undergo”. In the course of that decision, Mr Justice Chamberlain said: *“the words of 7(1) may be difficult to apply in individual cases but they are not in my view ambiguous”* (paragraph 128) He further endorsed the Tribunal’s decision in **Taylor** and said that *“Nonetheless the conclusions drawn by the Tribunal seem to me to follow from the plain words of the statute, even without elucidation by reference to parliamentary statements.”*

75. He refers to three important aspects of the definition: (para 129) ...*“other attributes of sex” – does not need to be a medical one, it may involve changing .....one’s name*. (para 130) Secondly ...*“reference to a process or part of a process, reflects that trans people will give effect to their agenda in a variety of ways. Some will embark upon a process ....hormone...therapy...or other medical intervention..., but some may decide, on reflection that they only wish to make some of these changes. The words in parenthesis make clear that this does not matter: they are still protected by the 2010 Act”*. Further that protection starts before the process has started. (Para 131). *“All that is required is that they propose to undergo at least part of such a process. The word “proposing” connotes a conscious decision, which can properly be described as settled, to adopt some aspect of the identity of a gender different from assigned at birth”*. At paragraph 133 Mr Justice Chamberlain refers to a child satisfying the definition in section 7.. *“provided they have taken a settled decision to adopt some aspect of the identity of the other gender.”*

76. The EHRC Code of Practice on Employment at paragraph 2.23 says that *“gender reassignment” is a personal process, that is moving away from one’s birth sex to the preferred gender, rather than a medical process*. The EHRC notes that this part of the Code is being updated following the Supreme Court decision in **For Women Scotland Limited v The Scottish Ministers [2025] UKSC 16**.

77. **For Women Scotland v The Scottish Ministers** which concerned the meaning of “sex” “man” and woman” in the Equality Act 2010 in light of the Gender Recognition Act 2004 confirmed that sex within the provisions of the Equality Act 2010 means biological sex, that is male or female. The definition of sex within the Equality Act 2010 makes clear that the concept of sex is binary.

78. The Supreme Court referred to **R (Elan Care) v Secretary for State for the Home Department UKSC/2020/0081** paragraph 52:

*As was explained in evidence, there is no legislation in the United Kingdom which recognises a non-gendered category of individuals. On the contrary, legislation across the statute book assumes that all individuals can be categorised as belonging to one of two sexes or genders (terms which have been used interchangeably).*

79. When clarifying that the gender reassignment is defined separately from sex, the Supreme Court reminded us that it is the process of reassignment not sex which is protected. Paragraph 199:

*Accordingly, the EA 2010 recognises sex and gender reassignment as distinct and separate bases for discrimination and inequality, giving separate*

*protection to each. Those who have the protected characteristic of gender reassignment are referred to as a transsexual person, (section 7(3)(1)) not as a “trans” woman or man. There is no distinction drawn in section 7 or elsewhere between those for whom the relevant process would involve reassignment male to female or female to male. In other words, it is the attribute of proposing to undergo, undergoing, or having undergone a process (or part of a process) for the purpose of reassignment, which is the common factor, not the sex into which the person is reassigned.*

### Harassment

80. Unlawful harassment is provided for under section 26 Equality Act 2010, the relevant parts of which are:

- (1) A person (A) harasses another (B) if—
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) ....
- (3) ....
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
  - (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.

81. The EHRC Code at paragraph 7.9 states that 'related to' should be given a broad meaning 'a connection with the protected characteristic'.

82. In **Betsi Cadwaladr University Health Board v Hughes and ors EAT 0179/13**. The EAT observed that 'the word "violating" is a strong word.

*'Offending against dignity or hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence'.*

83. In **Pemberton v Inwood 2018 ICR 1291, CA**, Lord Justice Underhill, provided the following guidance:

*‘In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant’s dignity or creating an adverse environment for him or her, then it should not be found to have done so’.*

## Decision and Conclusions

### Gender Reassignment

84. The claimant’s case is that the conduct they rely upon was related to their non binary gender. We consider firstly the question of whether the claimant as a non binary person has the protected characteristic of gender reassignment. We raised with the parties at the outset of the hearing whether this was a question which could be decided as a preliminary issue, prior to the evidence of all witnesses being heard. Both parties requested that the issue was left to be decided having heard all the evidence, in part because there was otherwise a risk that the case might not be completed in the time allotted and would then cause additional delay, and all witnesses were ready and available to give evidence during the trial window. The Tribunal agreed to this approach having taken into account the overriding objective.

#### Claimant’s submissions

85. Ms Widdett’s submissions focused upon the decision in **Taylor** and the judgment of Employment Judge Hughes and panel. She adopts their reasoning, which is set out above. Essentially she says that section 7, particularly “proposing to undergo” is ambiguous and as such it is appropriate, with the authority of **Pepper v Hart [1993] AC 593** to look to Hansard, specifically those comments set out in **Taylor** which support the premise that gender reassignment within section 7 of the Equality Act 2010 was intended to cover a “*spectrum moving away from birth sex, and that a person could be at any point on that spectrum. That would be so whether they described themselves as “non-binary” i.e. not at point A or point Z, “gender fluid” i.e. at different places between point A and point Z at different times, or*

*“transitioning” i.e. moving from point A, but not necessarily ending at point Z, where A and Z are biological sex.”*

86. Miss Widette also referred the Tribunal to other decisions: Firstly, the High Court decision in **R(AA) v NHS England** (paragraph 129) which endorses Employment Tribunal's conclusions including the quotes above, but we note that Mr Justice Chamberlain says that section 7 is not ambiguous, though it may be difficult to apply.

87. Secondly, **For Women Scotland** which was decided after both **Taylor** and **R(AA)**. The Supreme Court clarified that sex within the Equality Act 2010 is biological sex and binary. She notes that the Supreme Court expressly preserved the distinct protection afforded to trans individuals under the separate protected characteristic of gender reassignment.

88. She also refers to the House of Lords decision in **R(Quintavalle) v Secretary of State for Health** in which Lord Bingham of Cottrell stated at paragraph 8:

*The court's task within the permissible bounds of interpretation is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historic context of the situation which led to its enactment.*

89. She says that the extracts within Hansard should therefore be relied upon.

#### Respondent's Submissions

90. Ms White on behalf of the respondents confirmed that all respondents took a neutral stance as to whether section 7 Equality Act 2010 applies to the claimant.

91. We have also considered the authorities and documents referred to in paragraphs 166 to 178 of **Taylor** and paragraphs 124 to 136 of **R(AA) v NHS England**.

#### **Decision**

92. The claimant is non binary. Their sex at birth was female. They have no intention to transition to the male sex. They have changed their name by deed poll to Haech and live under that name. They have the preferred pronouns of they/them. The claimant intends taking no other steps to change their sex, medical or otherwise.

93. The starting point are the words of the Statute itself. The Supreme Court emphasised in **For Women Scotland** that “sex” within the Equality Act 2010 means biological sex. As such sex is a binary concept, male and female. The question we consider that this Tribunal needs to answer in this case, is what

does “for the purpose of reassigning the claimant’s sex” mean following **For Women Scotland**.

94. In essence, what journey does section 7 require the claimant to be on for them to have the protected characteristic of gender reassignment. There is no doubt that the claimant has embarked upon a journey by changing their name by deed poll, living under that name and asking that others use their preferred pronouns of they and them, but is it for the purpose of reassigning their sex?
95. The Supreme Court reminded us of the general rule that there should be a consistent meaning given to a word or term used more than once in the same legislation and that the general purpose of an interpretation provision is to fix the meaning of such word or term throughout the legislation in question. (paragraph 176). It notes that the circumstances in which that presumption may be rebutted will be rare.
96. The word “reassigning” in our view means a move from one thing to another. We have considered dictionary definitions such as in Collins: *Reassign/verb (transitive) to move (personnel, resources, etc) to a new post, department, location, etc*
97. It requires a from and a to. As sex is binary, that process has to be with the intention of changing from one sex to the other. In our view it is not sufficient for the claimant to be moving from away from the female sex, to qualify for the protection within section 7, they need to have the purpose of reassigning their sex to that of the opposite sex.
98. On our reading of section 7 Equality Act 2010 in light of the clear direction from the Supreme Court that sex is biological sex and as such is binary, the journey can only be from one sex to the other.
99. We consider that there is no ambiguity in section 7, such that we need to invoke **Pepper v Hart** and the more recent authorities in that vein. Mr Justice Chamberlain in **R(AA) v NHS England** was of the same view. We note particularly that the later authorities have insisted on strict observance of these conditions. As such it is not necessary for us to refer to Hansard and the debates which Ms Widdette has reminded us of.
100. We do not think that **Taylor** and **R(AA) v NHS England** assist us. Both cases were decided before **For Women Scotland**. In both decisions all claimants had originally sought to move from one sex to the other and the focus in both cases was upon what “proposing to undergo” meant within section 7. We consider that in this case, that is not the question we need to consider.

101. In both decisions however there is reference to moving away from birth sex, which it is appropriate that we consider. In **R(AA) v NHS England**, Mr Justice Chamberlain says: “*The word “proposing” connotes a conscious decision, which can properly be described as settled, to adopt some aspect of the identity of a gender different from assigned at birth*” (our emphasis) (though goes on to say at “(Para 133) when referring to a child satisfying the definition in section 7.. “*provided they have taken a settled decision to adopt some aspect of the identity of the other gender.*” (our emphasis)) and in **Taylor** the Tribunal refers to the process requiring a move away from birth sex.
102. The only reference that the Tribunal has found to indicate that a process to move away from birth sex is sufficient to meet the definition within section 7 (rather than it being a process to move from one sex to the other) is the EHRC Code of Practice on Employment, which the EHRC are in the process of updating following **For Women Scotland** and as such we consider is of limited assistance.
103. We have carefully considered the judgment of the Supreme Court in **For Women Scotland** and believe that there is nothing in the judgment which suggests that our view is incorrect. Paragraph 199 of the judgment as set out above, clarifies that it is the process of reassignment which section 7 is protecting, when explaining that sex and gender reassignment are “*distinct and separate bases for discrimination and inequality, giving separate protection to each*”. That does not however detract from our view that the process still requires the purpose of the reassignment of sex.
104. Although the claimant has taken steps to change attributes of their sex from female, by changing their name to a name which can be identified as of either sex, and has changed their preferred pronouns, those are not in our view attributes which are for the purpose of moving from one sex to the other, they are steps in the process of moving away from the female sex to a different gender identity, ie that of non binary. The claimant is not proposing, nor do they intend to take any steps to reassign their sex from that of female to male.
105. We therefore find that the claimant does not have the protected characteristic of gender reassignment.
106. Although having made this finding, it is not incumbent upon us to consider the harassment complaint, we have done so at the request of the parties.

### **Harassment - Decision**

107. We have dealt with each of the allegations below and have grouped the three allegations relating to the ICT department and similarly the three relating

to Yvette Dunn as our reasoning is similar. The remaining allegations we have dealt with separately.

108. The test is set out in section 26 Equality Act 2010. The claimant does not allege that any of the respondents acted deliberately. Their case is put on the basis that the effect of the respondent's actions violated their dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for them.
109. In respect of all allegations other than the interaction with Yvette Dunn on 31 January 2024, we find that the conduct complained of was related to misgendering the claimant or using their deadname. Both are related to their non binary status. Had we found that the claimant had the protected characteristic of gender reassignment by reason of their being non binary, we would have found that the respondent's conduct in each of these allegations were related to this. In respect of each allegation, the respondents accept that the conduct was unwanted.
110. We start by saying that we accept that the claimant was distressed, upset and offended by each of the incidents they complain of. They have couched that in various terms in their witness statement and in their evidence before us. It was a cumulative frustration with the first respondent, particularly in respect of the ICT issues that they felt it could not get it right. By that they meant that they wanted for all purposes throughout their interactions with the first respondent and its staff their correct pronouns be used and any references to their deadname to be deleted from their records. These ongoing issues caused the claimant anxiety as to when they may be misgendered again or see their deadname. They say that by not ensuring that all staff were properly trained in Trans Awareness, and in not having systems in place to ensure the claimant's correct pronouns were used, they were subjected to unwanted conduct which violated their dignity or created the environment set out in section 26(1)(b)(i).
111. Firstly, we do not find that the claimant has shown facts from which we could conclude that any of the incidents had the effect of violating their dignity. Violating is a strong word. Offending against dignity or hurting is not enough. The claimant has suggested that they felt "unsafe". They have not shown what they mean by this, and we found no evidence of the conduct having that effect. Much of their evidence about the effect of the conduct upon them upon them is vague and imprecise. Although we do not dispute the offence, distress and frustrations that these issues have had upon the claimant, we find that viewed objectively the claimant has not shown facts from which we could conclude that the conduct violated the claimant's dignity.

112. Moving to consideration of section 26(1)(b) and whether the respondent's conduct has had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
113. In considering whether the respondent's conduct had the prescribed effect, the Tribunal must consider the perception of the claimant; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect.
114. The first point is a subjective one, how the claimant viewed these incidents and the effect upon them, and the last is an objective one, do the Tribunal consider that it was reasonable that the respondent's conduct to have that effect? In considering these points, we can look at all the circumstances around the incidents. We are reminded that is important to note that section 26(1)(b) requires the conduct to have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Circumstances relevant to all allegations

115. We make some findings which are relevant to all issues before moving on to the individual allegations.
116. Some of the factors a tribunal might take into account in deciding whether an adverse environment had been created were noted in **Weeks v Newham College of Further Education EAT 0630/11**. Mr Justice Langstaff, then President of the EAT, held that a tribunal did not err in finding no harassment, having taken into account the fact that the relevant conduct was not directed at the claimant, that the claimant made no immediate complaint, and that the words objected to were used only occasionally. (However, he noted that tribunals should be cautious of placing too much weight on the timing of an objection, given that it may not always be easy for an employee to make an immediate complaint.) Langstaff P also pointed out that the relevant word here is 'environment', which means a state of affairs. Such an environment may be created by a one-off incident, but its *effects* must be of longer duration.
117. Training: The first respondent is a large public employer. All its staff have mandatory EDI training and the training of all staff involved in this case was up to date. In addition, the Trust had optional Transgender Awareness training and other than the service desk members of the ICT team (who could not be released because of their pressures of work) all managers and approximately 30% of staff had attended this optional training. A number of the witnesses, including Mr Spencer, Ms De Zwaan and Mr Farnan had separately obtained their Rainbow Badges which was additional EDI training and in Ms Graves' case she had undertaken external transgender awareness training separate from her employment and before she had the conversation with the claimant.

An additional transgender presentation was given to claimant's own team in May 2024 and Ms Phillips had organised additional transgender training for the Workforce Wellness team.

118. Not intentional: The claimant accepts that none of the alleged actions of the first respondent or the claimant's colleagues were deliberately intended to cause them any offence or harm.
119. Pressures within the ICT Team: The claimant complains about the ICT team and recurring mistakes. We accept the respondent's evidence that ICT were under an immense amount of pressure. They had challenging staffing levels and were hampered by workload and a complicated series of systems which were not integrated, some of which were administered externally. They sought to balance the needs of patient facing activities with administrative functions. They initially understood that changes of names were an administrative issue and did not have any risk of causing upset or harm. Changes of names were dealt reasonably regularly with marriage changes without any issues. The claimant in their initial request did not indicate the change was urgent or the reason for it. When it became apparent that the delay was causing harm, they took steps (not always successful) to resolve it. This included adding additional stand-alone features to the national ESR systems to ensure pronouns could be recorded, seeking to engender a culture of inclusivity.
120. By August 2022, it appears the claimant's IT problems with misgendering/deadnaming had been resolved.
121. In October 2023, two misgendering issues arose with Mr Williamson and Ms Graves and the deadnaming email address appeared on the Mail central system. This was within a short space of time and over 12 months since any other issues with ICT had arisen.
122. Unfamiliarity: The Trust has 4500 or so employees. Although no evidence can be absolute as to how many staff are non binary, it seems likely from those who have asked that their title be recorded as Mx, that it is a handful. Only 3 people, including the claimant have made that request. That percentage of staff accords with the figures provided by both parties within the ONS statistics. As indicated by Ms Windett, even with a small number of non binary staff no staff member should be subject to harassment because of the way in which they choose to be named or addressed. The numbers do however have a bearing upon the familiarity of staff with non binary colleagues. We live in a binary society and the use of the pronouns they/them is unfamiliar territory for many of us. At times in this Tribunal, both counsel and the Judge have failed to use the claimant's preferred pronoun. On each occasion the person involved apologised. The claimant says they did not take offence.

123. Apologies: On each occasion that the claimant raised a concern about misgendering or deadnaming, including from Ms Dunn, they received an appropriate apology, and throughout their manager offered support and raised matters on their behalf. We have seen many emails and correspondence brought about by the claimant's complaint and the general tone of all correspondence seen by us, including the grievance outcomes are apologetic and understanding. All staff involved demonstrated a real intention to do their best to ensure they get it right going forward and propose and, in most cases, put in place positive steps to achieve this.
124. One of the features of this case and the approach taken by the claimant during their interactions with their colleagues and during the various grievances is the claimant's views upon the apologies given. The claimant was unwilling to accept an apology of behalf of ICT, they wanted it from the ICT team itself and expressed to the Trust and to us that an apology in itself was insufficient unless it showed a deep understanding of the impact upon them, as it would then "show insight" which was required in order for changes to be made. We consider that the apologies given by every member of the Trust were genuine and heartfelt, and such as to seek to ensure the claimant's concerns were appreciated and understood by them. It is unfortunate that the claimant was unwilling to accept them as such and take such an inflexible stance.
125. Positive Steps: Steps which were proposed both during and before the grievances were in the most part put in place where practical. These were extensive and demonstrated a genuine willingness and desire to embrace non binary and trans employees.
126. The claimant's approach: In considering the environment which the claimant says has been created by the respondents' conduct, we consider that it is reasonable to look at how the claimant has contributed to it. Although the claimant says that it was not up to them to, for example, tell someone their pronouns, that takes away their opportunity to influence the environment and educate colleagues as to the environment they seek to create – particularly where the social norms are binary, and there are such a small number of non binary people in the organisation. The claimant approach has, as indicated by one of the witnesses, been unforgiving.

#### ICT complaints

#### Incident A: 4 October 2023: Misgendering C in Service Desk ticket referring to "her"

127. We accept that the claimant was upset and offended by seeing the service ticket referring to their incorrect pronouns. Ms Graves however did not know the claimant's pronouns or that the claimant was non binary. The

claimant did not tell Ms Graves of their preferred pronouns when introducing themselves nor indeed did they ask Ms Graves how she would like to be addressed. The claimant accepts this but says that the ICT department had failed to protect them by ensuring the service desk team had undergone appropriate training on trans issues and by updating its ICT systems to ensure that the claimant's pronouns were available to the service desk team. Our comments above including the pressures which the service desk was subject to, and the steps taken to find a work around to the national NHS system are relevant. These together with the immediate apology provided by Ms Graves, her taking the step to record the claimant's correct pronouns on the service ticket to seek to ensure it didn't happen again in respect of that ticket, the supportive reaction of the claimant's line manager when they reported it to him and that at no stage did the claimant suggest that they could not work with Ms Graves again are all circumstances which the Tribunal find support that although the respondent's conduct had the effect of making the claimant feel offended, viewed objectively it was not reasonable in all the circumstances for it to have had that effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

128. It was accepted by the claimant that this allegation was presented outside the prescribed time limit. As this allegation is not proved, it is not necessary for the Tribunal to make any finding as to whether time should be extended.

**Incident B: 10 October 2023: Deadname reappearing in Mail Central**

129. Although we find that the claimant was distressed and offended by seeing their deadname email appear on the Mail Central System, it was not reasonable to that to have the effect the claimant alleges. The claimant had been working with the rebooted laptop for over 12 months apparently without problem. Although they understood all issues had been resolved, it seemed that this was incorrect. We accept that would have been of concern to the claimant, but their approach was unforgiving. Extensive efforts had been made previously by the ICT team which both parties had understood were successful. The fact that ultimately even the ICT's initial understanding of why there continued to be a problem was not correct, shows what a difficult issue this was. Taking into account the reason for that problem which was eventually discovered to be a problem with the claimant's own laptop, the quick resolution, the apology given, their managers supportive response and the issues identified above, viewed objectively it was not reasonable in all the circumstances for it to have had that effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, even if they were offended and frustrated.

**Incident D: 11 October 2023: Misgendering in call log and email referring to "her" and "she".**

130. The claimant had understood that in Ms Graves noting their preferred pronouns on the service ticket, the service desk would have that information available to them. That was a misunderstanding. Mr Williamson had no information about the claimant's non binary status or their preferred pronouns when he took the claimant's call on 11 October. The claimant did not tell Mr Williamson when they started the call, which is something which if they had done, may have prevented the later distress to the claimant. The claimant expected the respondent's IT system to have recorded the information. This was a short time after the issue with Ms Graves, and at that time the first respondent had not looked at a workaround to the NHS national ERS system. When they reported it their manager, his immediate response was supportive. The matter was considered at the claimant's grievance and recommendations made. We do not consider that this, viewed objectively had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
131. Again, the claimant's complaint is really with the ICT team. In all the circumstances, including the reasons set out above in respect of the pressures on the ICT team, we find that Mr Williamson's use of the claimant's incorrect pronouns in the service ticket did not have the effect required by section 26 Equality Act 2010.

#### Yvette Dunn complaints

**Incident E:** 12 October 2023: Misgendering in face-to-face conversation referring to "she" and "Helen".

**Incident F:** 17 October 2023: Email from YD denying misgendering and failing to apologise

**Incident I:** 31 January 2024 YD failing to acknowledge C in corridor interaction responding with "hi" and turning away.

132. We find that it was not reasonable that the quoting of a patient, even when using the claimant's incorrect pronoun or name, to have had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant should have realised and accepted that this was not deliberate and have accepted from reading the email that there may be some confusion in Ms Dunn's mind as to whether when quoting a patient, she herself was misgendering the claimant. Read in that context, Ms Dunn's denial in her response was perfectly understandable. Why would she apologise for something that she did not think she had done? She was understanding that the claimant may wish to discuss it and offered to chat about it. The claimant's view that Ms Dunn had refused to apologise and their refusal to engage in mediation demonstrated the very fixed view that the claimant had, to the extent that they were unwilling to listen to other views. In all the circumstances, it was not reasonable for Ms Dunn's comments or the follow up email to have had the effect upon the claimant they suggest.

They could have discussed it with Ms Dunn or engaged in the mediation. Looked at objectively and reviewing the emails and interactions, it was not Ms Dunn's conduct which caused the claimant to feel the way they did, the claimant was in part responsible by having an intransigent view of Ms Dunn's conduct and their taking action in putting paper on the glass panel of their office did not assist them.

133. In respect of the incident on 31 January when the claimant says Ms Dunn failed to acknowledge them and turned away, it is clear that Ms Dunn did acknowledge the claimant. She said "hi". This was three months after the original incidents and having seen each other in between without any apparent problem, it was not reasonable for Ms Dunn's innocuous conduct to have had the effect upon the claimant's environment which they allege. In any event we are not satisfied that any conduct was related to the claimant being non binary. This incident had nothing to do with the events in October which centred around the claimant's belief that she had been misgendered.

**Incident C: 10 October 2023: Misgendering at Vaccination clinic**

134. Appropriately, the vaccination nurses' attention when delivering vaccines in the drop in clinic was upon the safe delivery of that service. It was a fast-paced and they did not realise that the claimant had noted on the form that they were non binary. Although the claimant was offended by being referred to as "she", Ms Carrington and Ms Stein apologised profusely for their error and have since put in place changes to their practice to ensure they do not cause offence to any non binary patients in the future. In these circumstances and those identified above, it was not reasonable for the mistake of the vaccination nurses to have created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

**Incident G: 3 January 2024: Sending Employment contract with C's deadname**

135. We agree with the respondent's policy that historic documents are a record of what has happened previously and should not be altered. Although the claimant seeing their deadname caused them distress, it cannot be said that in all the circumstances, it is reasonable for it to have the prescribed effect set out in section 26 Equality Act 2010 upon the claimant. The claimant's prior identity is something which cannot be extinguished.

**Incident H 10 January 2024: Allocating service user to C despite Case Alert saying user "would prefer to see a female therapist"**

136. The respondent's administration team was aware of claimant's non binary status. The claimant jumped to the conclusion that the patient was incorrectly allocated to them, without making any enquiry to check if that was

correct. That is why they felt offended. The claimant could have asked the administration team, particularly if they didn't see anything on the notes which assisted. Rather they immediately raised the matter with their line manager and the administration manager, and the patient was reallocated. In fact, there was a perfectly reasonable explanation. The patient had been asked if they had any preference for the gender of the clinician for the review call. They didn't. We find that in all the circumstances, including that a full apology has been given it was not reasonable for it to have had the effect upon the claimant which they suggest, and which is required by section 26 Equality Act 2010.

137. All claims fail and are dismissed.

138. We understand that transgender issues are emotive and sensitive matters and that our decision will be disappointing to the claimant and to others. In some cases, this being one, there is no direct authority from higher courts upon a legal point. The role of an Employment Tribunal is to consider the evidence and to decide upon the case before us, having applied the law as we interpret it. We have done so to the best of our ability.

Approved by:

**Employment Judge Benson**

**Dated 6 October 2025**

Judgment sent to the parties on:

27 October 2025

.....

For the Tribunal:

Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at [www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)