

Facilities and the Equality Act

An exercise

Exercise: Facilities Scenario

You run an organisation employing 10 people, half of them women. There are separate male and female toilet facilities and an accessible toilet for disabled users.

One of your employees is undergoing gender reassignment. After a period of counselling, she has begun taking medication to alter her physical appearance and will from now on live in the gender she identifies with, which is female.

She was previously called Samuel and has now asked to be known as Sarah. She has told you that she will be coming to work dressed as a woman. She wants to continue to work for your organisation and has asked you to tell other staff and to make arrangements for her to use appropriate facilities.

You and Sarah agree a statement which is circulated to other staff while Sarah is on a week's leave. Other staff had been aware that Sarah had been having treatment but not all had appreciated what this was for.

Even though your statement explained gender reassignment and that Sarah has identified as female for as long as she can remember, three of the female staff come to see you before Sarah comes back to work to say they do not want someone they have previously known as a man to use the female toilet facilities.

Question: Think about the following as if you are an employer - someone who has other people working for you – whether you really are or not.

How will you manage this situation? What are Sarah's rights? What do you say to the women who are objecting?

Answer

If a Transsexual member of staff has a Gender Recognition Act certificate or is post operative and visually and for all practical purposes indistinguishable from someone of her acquired gender it would be unlawful to deny her access to the female toilets.

However, for transsexual people who do not have a GRC or are in early stages of transition, such as Sarah, the situation is more complex. The Courts have previously given the following guidance in such cases (NB employers should be aware that the issue may be tested again in the courts again under the Equality Act):

- The status of transsexual does not automatically entitle the employee to be treated as a woman, with respect to toilet facilities . The right does not arise automatically but is 'acquired' by making progress in the gender reassignment procedure
- The moment a transsexual person is entitled to use female toilets depends on all the circumstances, including her conduct and that of her employers. Factors to be taken into account by the employers include the stage reached in treatment, including the employee's own assessment and presentation. The employer is also entitled to take into account the

susceptibilities of other members of the workforce. However, care should be taken to avoid any decision based on ignorance or prejudice.

- Transsexual staff must be provided with toilet facilities no less commodious than other toilets, but also the question of whether a transsexual should be granted the choice she seeks should also be considered.
- a permanent refusal to provided that choice to someone presenting to the world as a woman could be an act of discrimination, even if the person had not undergone the final surgical intervention.

Other action

The staff who object must be told what Sarah's rights are ie that it is unlawful to treat someone less favourably or harass them because gender reassignment. Gender reassignment is not an easy option for her by any means but something she feels she has to do. The women need to understand that Sarah is not a man dressing as woman but someone who identifies as a woman and always has. Additional information about gender reassignment may help them with this.

The women should be informed that less favourable treatment of Sarah because of her gender reassignment is unlawful for which a perpetrator could be personally liable. Discrimination and harassment, for example, pointedly leaving the facilities when she enters, are disciplinary offences which will be dealt with under the disciplinary procedure.