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A system under siege and a law in conflict

As we move further into 2026, the UK's employment law landscape seems a structure under dual assault. On the one hand, the ET system's mechanical infrastructure is buckling under an unprecedented backlog of cases. On the other, tribunals have become a 'theatre of war', in which judges are being asked to be the moral arbiters of conflicting world views.

Since the Equality Act (EqA) came into force in 2010, we have seen an explosion of cases involving conflicting philosophical beliefs. Initially focusing on religious belief, the frontline is now occupied by the intersection of sex-based rights and gender identity. The landmark Supreme Court ruling in *For Women Scotland* clarified that 'sex' under the EqA refers to *biological sex* – a decision that, rather than settling the matter, has acted as an accelerant.

In our first article in this spring edition of *Briefings*, Audrey Ludwig MBE argues that conflicting rights are nothing new in equality law, and that the recognition and *balancing* of those conflicts should be a key responsibility for a modern democratic legal system. Rather than denying the existence of controversy and fostering a culture of 'no debate', we should encourage a return to civil discourse and create a space for rigorous, evidence-based debate. Otherwise, says Audrey, we risk developing an organisational culture in which nuanced policy decisions are replaced by rigid, defensive procedures to avoid the social media outcry that now accompanies many high-profile cases.

It strikes me that one such example can be seen in the recent tribunal case of *Sandie Peggie v Fife Health Board*, widely reported in the press. The case concerned a nurse who complained about a trans colleague (Dr Upton) being allowed to use the female staff changing rooms at the hospital. The ET (in a judgment of over 300 pages) found that the beliefs of both the claimant and Dr Upton were protected under the EqA, but the Health Board had harassed the claimant both in its treatment of her complaint and of the subsequent disciplinary proceedings against her. A number of other claims, including those against Dr Upton, were dismissed. In reaching this mixed outcome, the tribunal adopted a four-stage 'proportionality test' by which to adjudicate on policies about single-sex spaces. Based on the Supreme Court decision in *Bank Mellat v HM Treasury*, the test emphasises the need for 'balance' between the legitimacy of a policy's aim and the severity of its impact on others.

Peggie was, however, shortly followed by the case of *Hutchinson v County Durham and Darlington NHS Trust*, in which the emphasis moved from the right to freedom of belief to the right of privacy. In what many may see as a directly conflicting judgment, the second ET focused on the statutory requirement for single-sex spaces at work, and found the loss of 'biological privacy' is inherently degrading for women. *Peggie* is being appealed to the EAT, but we wait to see whether *Hutchinson* will do the same, and if so, how the court will resolve this legal divergence.

Another interesting point about *Peggie* is that the judgment had to be reissued twice after significant errors were found in the text. While these errors were more than mere typos, I can't help but wonder whether they were exacerbated by the current overload on the ET administrative system.

This brings us to our second feature article, in which Ocean O'Malley dives into the sobering reality of an ET system in gridlock. For both practitioners and claimants, the backlog represents a significant obstacle to access to justice. Discrimination claims – often the most complex and sensitive – now face extended delays, with many hearings listed as far ahead as 2028. Ocean looks beyond the statistics to examine some of the less direct causes of the backlog, such as problematic modernisation and efficiency measures. He also argues that the most vulnerable claimants are disproportionately impacted, as they lack the financial or emotional resilience to cope with protracted litigation.

All this against a backdrop of the impending implementation of the Employment Rights Act 2025. While the reduction of the qualifying period for unfair dismissal claims is still nearly a year away, there are fears that any expansion of employment rights will only accelerate the increasing caseload faced by ETs. Personally, I remain hopeful that wider access to ordinary unfair dismissal claims will reduce the number of automatic unfair dismissal (and discrimination) cases that claimants without two years' service are currently forced to run. Only time will tell.

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