Taking a Claim to a UK Employment Tribunal

A Guide to UK Employment Tribunals for the Transgender Community

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Press for Change
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Stephen Whittle OBE, LLD h.c., PhD, MA, LLB, BA, Professor of Equalities Law at Manchester Metropolitan University where he has taught for 20 years. Stephen transitioned from female to male in 1975. In 1992, he co-founded Press for Change (PfC), the UK’s transgender lobbying group in 1992. PfC took many cases to Europe and in 1995, P v S (European Court of Justice) provided employment protection for trans people in Europe. In 2002, the cases of Goodwin & I v United Kingdom Government (European Court of Human Rights) led to the Gender Recognition Act 2004 and the right for trans people to obtain legal recognition of their preferred gender role.

Stephen became a stakeholder advisor to the UK Govt. for the Act & in 2007 was appointed to the Equalities Review (ER) to advise on trans issues.

As principle researcher, he worked with Dr Lewis Turner to draw up the ER’s trans study, which resulted, in the Equality Act 2010, in the provision of full protection from discrimination or harassment for trans people in employment and when accessing goods and services.

Stephen has advised on transgender law to the UK, Irish, Italian, Japanese, and South African governments, the European Union, the Council of Europe, and the European Commission. He advises lawyers and writes briefs, or is an expert witness, for courts worldwide.

Stephen has received numerous awards for his work, including in 2007 the Lambda Literary Award for ‘The Transgender Studies Reader’ (with Susan Stryker, 2006, New York: Routledge) and in 2002, the Sylvia Rivera Award from the Centre for Lesbian & Gay Studies at the University of New York for 'Respect and Equality: Transsexual and Transgender Rights' (2000, London: Cavendish). In 2002, he received the Law Society/Liberty/Justice Human Rights Award from the UK’s Human Rights Legal Profession, and in 2012 he received the Frank Kemeny Life Time Achievement Award (2010) from the North American LGBT Bar Association. In 2014 He was awarded the American Bar Association’s Stonewall Award for his contribution to LGBT rights and the education of young lawyers. He also received an Honorary Doctorate in Laws from Sussex University. In 2015 he was elected a fellow of the National Academy of Social Sciences. In the 2005, Queen’s New Year’s Honours list he was made an Officer of the Order of the British Empire (OBE, 2005) for his work on gender theory and rights.
Part A. Employment Rights for Trans People

A.1. The Equality Act 2010
   A.1.1. What does Gender Reassignment mean?
   A.2. Equality Act 2010, Claims that Trans People can bring.
   A.2.1. s.13: Direct Discrimination
   A.2.2. Discrimination due to Association & Perception
   A.2.3. Equality Act 2010 s.19: Indirect Discrimination
   A.2.4. Equality Act 2010 s.26 Harassment
   A.2.5. Equality Act 2010 s.27 Victimisation
   A.2.6. Equality Act 2010 s.16: Absences from Work Due To Gender Reassignment
   A.2.7. Before Making your Complaint to a Tribunal

Part B. Your Diary of Discrimination

B.1. Your Details
B.2. Your Transition
B.3. Your Gender Reassignment treatment
B.4. Your Legal Status
B.5. Your Employment Details
B.6. The Discrimination Details
B.7. Your Claim Details

Part C. Your Claim & the Employment Tribunal

C.1. What amounts to a claim under the Equality Act 2010
C.2. Resolving a Matter Internally

Part D. Your ‘Discrimination Letter’

Part E. Detailing your Claim
   E.1.1. Recruitment
   E.1.2. Trade Union Membership
   E.1.3. Unlawful Dismissal
      a. Unfair Dismissal
      b. Constructive Dismissal

Part F. Discrimination Claims
   F.1. Typical Compensation Awards for Discrimination
   F.2. Awards for Gender Reassignment Discrimination
A.1. The Equality Act 2010

The Equality Act 2010 states that it is UNLAWFUL to:

- Discriminate against, or
- Harass, or
- Victimise, or
- Treat in any other way differently, to their detriment;

Transgender or Transsexual people, or People perceived to be Transsexual or Transgender

in Recruitment for Employment, or in Employment or Vocational Training.

Because they are, or you perceive them to be:

- Intending to undergo gender reassignment, or
- Undergoing gender reassignment, or
- Have undergone gender reassignment, or
- They are absent from work to undergo their gender reassignment treatments or surgeries.

A.1.1. What does Gender Reassignment mean?

Section 7 of the Equality Act 2010 DEFINES a person who is intending to undergo or who is undergoing gender reassignment as a transsexual person.

The guidance to the Equality Act 2010 states quite clearly that Gender Reassignment is a SOCIAL PROCESS, gender reassignment (for the purposes of the act) is NOT medical gender reassignment.

Protection from discrimination, harassment or victimisation is invoked because:

1. You intend to transition to living permanently in your preferred gender role at some time in the future [you DO NOT have to have seen a doctor about obtaining medical gender reassignment]
If you have not yet transitioned, you may have to be able to demonstrate to the Tribunal that you do have the **real intention** to transition to living permanently in your preferred gender role at some point in the future.

2. **You are transitioning** to living permanently in your preferred gender role [you DO NOT have be seeing a doctor about obtaining medical gender reassignment].

3. You have, in the past, **transitioned** to living permanently in your preferred gender role [you DO NOT have to have undergone hormone treatment, gender reassignment surgery, or undergone any other medical gender reassignment treatment, or have any intention to do so].

**If you have already transitioned**, it has to be **permanently** – you cannot choose to go to work as a woman, but remain as a man at home (or vice versa), and it must be a **genuine transition**, i.e. you do ‘make an effort’ to look like the man or woman you wish to be.

Currently, there is **no place in the law** to accommodate an entirely androgynous or swap-able look. If you wish to live a life where you have no gender or both genders, then you should retain your former gender in the workplace. If you suffer discrimination, challenge it possibly as a form of disability (for example a mental health disorder). Whilst unsatisfactory in terms of how you feel about yourself, it may be the only option that could work in court.

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To benefit from the Equality Act’s protection, your Employer **NEEDS TO KNOW** that you are intending to undergo, are undergoing or have undergone gender reassignment.

They are not expected to be mind-readers.

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The **Equality Act 2010** provides protection to trans people from **Discrimination**, **Harassment**, & **Victimisation**.

Protection extends to a person who is not actually trans, but who is **Perceived** to be trans.

The following sections provide details of the types of discrimination that are banned.
A.2. Equality Act 2010, Claims that Trans People can bring.

A.2.1. s.13: Direct Discrimination

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

s.13, the Equality Act 2010: DIRECT discrimination is treating a trans person unfavourably to their detriment as compared to others, because they are trans.

For example,

- Failing to appoint a person to a post,
- Failing to promote a person,
- Giving a person the worst work,
- Giving the person less working hours,

because they are a trans person, is unlawful discrimination.

A.2.2. Discrimination due to Association & Perception

s.13, the Equality Act 2010 makes it unlawful to treat a person differently to their detriment;

- Because the person is Perceived to be a transsexual person (seeing a person as someone who is having a ‘sex change’) treating them is any of the other discriminatory ways outlined in the Equality Act 2010 is also unlawful, even if the person is not intending to undergo or has not undergone gender reassignment treatment, or
- Because a person has an Association with a trans person (or someone perceived to be a trans person).

The phrase in s.13; “because of a protected characteristic” includes any situation when a person is treated unfavourably because they are in some way associated with a trans person. It might be that they are a friend, a relative, or simply an employee who has objected to other staff speaking badly about a trans person who is a co-worker, customer or service user.
### A.2.3. Equality Act 2010 s.19: Indirect Discrimination

s. 19 of the Equality Act 2010 provides protection to transsexual people from indirect discrimination.

**Indirect discrimination** means:

- putting in place a rule, or policy, or a way of doing things, that has
  - a detrimental impact on someone who is trans, or
  - makes it more difficult for a trans person to seek or continue their employment,

when this cannot be objectively justified.

Historically, the classic indirect discrimination rule was requiring police officers to be a certain height. Not only did it prevent many women from becoming police officers, but because of the height differentials between the ‘sexes’, trans men would almost certainly have been unable to become police officers in the past. Fortunately the rule no longer exists, and many trans men & women have now joined police services.

Examples of Indirect discrimination that could disadvantage transgender women would be workplace policies that say;

- Female staff cannot wear wigs, hats or scarves in the workplace
- Female staff cannot wear makeup in the workplace
- Female staff must be below a certain height

All these policies would potentially be Indirect Discrimination, as they would clearly disadvantage trans women who have to wear a wig, or makeup to successfully look like a woman, or who are taller on average than most women.

The industry would have to prove that there is an objective need for these policy e.g. in the case of makeup, risk of contamination in a clean laboratory setting.

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### A.2.4. Equality Act 2010 s.26 Harassment

s.26 of the Equality Act 2010 affords protection from Harassment

**Harassment** includes any unwanted conduct related to a person’s trans status which has
• the purpose or effect or **violating their dignity** or
• creating a **hostile, degrading, humiliating or offensive environment**.

For example,

• Allowing repeated, albeit petty, derogatory remarks, about ‘sex changes’
• failure to call the trans person by their preferred name,
• failure to use the correct gender pronouns for the trans person,
• putting news articles, posters / pictures or similar which ’joke’ about trans people, on the notice board,
• making sexual comments about the transsexual person. For example, some people think it is acceptable to ask trans people about their genitals. it clearly is not acceptable and could amount to harassment.

These all could amount to **unlawful harassment** of the trans person.

A.2.5. **Equality Act 2010 s.27 Victimisation**

**Victimisation** occurs:

• when a **trans person themselves** is treated unfavourably because they (the Trans person) has taken (or might be taking) a ‘protected’ action¹ under the Equality Act 2010.

• occurs when a person **who is associated with a trans person**, is **treated unfavourably or to their detriment** because the Trans person has taken (or might be taking) a ‘protected’ action under the Equality Act 2010 and the person who is victimised, is being victimised because they have supported the trans person who is doing this.

A **‘protected’ action under the Equality Act 2010** would mean an action where

• a trans person, or
• a person perceived to be trans, or

¹ The Equality Act 2010, makes a ‘protected’ action, any action from simply advising a person who is considering taking a case for discrimination through to a person who actually pursuing a case for discrimination in an Employment tribunal, or before a court
• a person associated with a trans person:
  ○ Is considering complaining about discrimination, harassment or victimisation, or
  ○ Is considering taking a claim to Tribunal about discrimination, harassment or victimisation, or
  ○ Is actually taking a case for discrimination, harassment or victimisation.

A.2.6. Equality Act 2010 s.16: Absences from Work Due To Gender Reassignment

s.16 of the Equality Act 2010 protects a trans person from being treated differently because they take absence from work for their gender reassignment treatments and surgeries.

This provision can be combined with other elements of Employment Law such as direct discrimination, unfair dismissal or unfair redundancy.

• For example, many employers now ‘limit’ the time staff take as sickness absence each year, and if they go over that time, they will be considered for dismissal due to ‘incapacity’.

s.16 of the Equality Act 2010 makes it quite clear that if a person is taking absence for gender reassignment treatments or surgeries, the use of a ‘time limit’ after which they will be deemed to not have the capacity to do their job will be unlawful.

• For example, it could be unlawful to refuse a (female to male) trans man permission to arrive a little late for work, once a fortnight, because he has to visit his doctors during the nurse’s treatment clinic for his hormone injection.

The refusal to allow the trans man time to attend for his injection would be unlawful discrimination if was no other way for him to receive his gender reassignment treatment.

s.13 of the Equality Act 2010, Direct discrimination means that refusing a trans person the time to attend their clinical appointments would ALSO be Direct Discrimination i.e. treating the trans person less favourably to their detriment because of their gender reassignment, if another employee was given time to attend similar medical appointments but for different reasons, e.g. an employee
having time to regularly attend a clinic for assessment of warfarin treatments, or a woman having regular late attendance whilst undergoing treatment for infertility, kidney dialysis, or any other illness in which there were specific clinic times.

A.2.7. Before Making your Complaint to a Tribunal

BEFORE bringing your complaint to an Employment Tribunal:

- Your employer MUST know you are intending to undergo, are undergoing or have undergone gender reassignment.
- The Discrimination, Harassment of Victimisation MUST have been because you are intending to undergo, are undergoing or have undergone gender reassignment.
- You must have clearly detailed the events, when and where they happened and who witnessed them. (see Part B: Your Discrimination Diary)
- You MUST raise a complaint using your Employer’s Internal Grievance Procedure
- If that fails you must write a Discrimination Letter to your employer (see Part C)
Part B. Your Diary of Discrimination

A Discrimination Diary is an essential tool for deciding what exactly your claim is and whether it will be successful. Whether seeking help from a voluntary advice group like Press for Change, your local Citizens Advice Bureau or Law Centre, or a solicitor, your Diary of Discrimination is what will enable them to short cut very quickly to the nub of the matter.

Please note, Press for Change staff are all volunteers providing legal advice in their free time. Before we can help you, you need to help us. Do the same for a solicitor you are paying and you could save hundreds of pounds.

A Diary of Discrimination should include all relevant details – tick off the various items as you detail them, ready for your legal advisor.

B.1. Your Details

- Your full name
- Was your birth registered in the UK, or in a British Consul, or with the British Forces overseas service?
- Your contact details,
  - Your address
  - Your postcode
  - Your email
  - Your phone
- Your age

B.2. Your Transition

- Have you transitioned at work?
  - If No – have you told anyone you intend to transition at work?
  - If yes - date when you transitioned at work?
- Have you have formally changed your name by statutory declaration or similar?
  - Have (and when) you informed HMRC of your change of gender for tax/NI purposes.
- Did you transition in this job?
- Did you transition before you started this job?
  - If you did, how did anyone in this workplace know you are trans?
  - Was it a previous employer who informed this employer that you are transsexual?
    - Did your previous employer inform your current employer in a job reference?
    - Did you give them permission to do this?
  - Was it someone who knew you before you transitioned?
    - A neighbour?
    - A friend?
    - A former work colleague?
- Did you transition in this workplace?
- If yes, what date did you transition?
  - Who did you tell at your current Employment that you were going to transition at work?
- Did you stay in the same workplace as that which you transitioned in?
- Are you still working at that workplace?

### B.3. Your Gender Reassignment treatment

- Current stage of treatment if undergoing gender reassignment?
- Name of the Gender Identity clinic, if you are attending one?
- Is your workplace problem related to time you are having to take from work due to your gender reassignment treatments or surgery?
  - Yes – then have you informed your employer about s. 16 of the Equality Act 2010?
    - If NO, see section A.2.6. of this guide, and ensure they get a copy of the relevant information.
B.4. Your Legal Status

- Have you been living in your preferred gender role for at least 2 years?
- If you have been living in your preferred gender role for at least 2 years, Have you applied for a Gender Recognition certificate?
  - If No, no matter where your birth was registered, apply for one now!!!
    Go to [www.grp.gov.uk](http://www.grp.gov.uk) and start the process, it is very simple and easy.
  - If yes, was your application successful or is it ongoing?
- Have you obtained a Gender Recognition certificate?
- Have you got a new birth certificate as well as a Gender Recognition certificate?
- Have you informed your employer that you have a Gender Recognition certificate?
- Has your employer asked to see your Gender Recognition certificate or your new Birth certificate?
  - If YES,
    - and your birth was registered in the UK or with a British Consul overseas, or with the British Forces Overseas service, you should have shown them your new Birth certificate.
    - And your birth was registered outside of the UK system, then you will not have a new birth certificate unless you have successfully applied in your home birth state for re-registration of your gender. You will have to show your Gender Recognition certificate.
- Do your employers or work colleagues know you have a Gender Recognition certificate?
  - If the answer is no, and they know you are trans, tell them you have a Gender Recognition certificate.
- Do your work colleagues or employers know that it is a criminal offence to disclose to anyone else that you are transsexual?
  - If the answer is no, and they know you are trans, tell them that it is a strict liability criminal offence to disclose that you are trans without your express permission to do so, and they could be fined up to
£5000.

B.5. Your Employment Details

- Is your employer
  - a recruitment agency or
  - a private company or
  - a public sector employer.

- Employers details: the Name of the Company which employs you
  - Employer’s address
  - Employer’s main phone number.

- Name and Contact details of the Managing Director /Chief Executive or whoever is in final charge.
  - Their email
  - Their phone number
  - Their address

- Name and Contact details of the Head of Personnel / Human Resources.
  - Their email
  - Their phone number
  - Their address

- Name and contact details of your Line Manager
  - Their email
  - Their phone number
  - Their address

- Name and contact details of your Employer’s Data Protection Officer
  - Their email
  - Their phone number
  - Their address

- Date when your employment commenced with the company

- Your job title and / or position
- Type of place you work e.g. office / laboratory / building site
- Number of people you regularly work with on a daily basis
- Your Contract terms e.g. part time / fixed term / permanent etc.
- Your Current salary – one of:
  - Hourly rate
  - Weekly rate
  - Monthly Rate
  - Annual Rate
- Obtain and include a copy of your employer’s Grievance Procedure for bringing complaints about things that happen at work.
- Obtain and include a copy of your employer’s Disciplinary Procedure.
- Obtain and include a copy of the following if available:
  - Your employer’s Equality Policy
  - Your employer’s anti-Bullying Policy
  - Your employer’s Data Protection Policy
- Is there a Trade Union for employees like you in your workplace
  - If yes, and if you haven’t joined yet, Join NOW
- Have you told your Trade Union rep of the problems you are having?
  - Are they willing to represent you in any grievance you bring?
B.6. The Discrimination Details

Create a Table like the one below

<table>
<thead>
<tr>
<th>Date</th>
<th>Where it happened</th>
<th>Who did it / made it happen</th>
<th>What is their job</th>
<th>Who witnessed it</th>
<th>Time</th>
<th>What words were said</th>
<th>What did they do</th>
<th>Your response</th>
<th>Did you tell your boss?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/10/13</td>
<td>In the main office</td>
<td>John Brown</td>
<td>Line manager</td>
<td>Nobody</td>
<td>3.30pm</td>
<td>“You know what cure you need”</td>
<td>He tried to have sex with me</td>
<td>I kicked him hard &amp; ran out of the room</td>
<td>Yes</td>
</tr>
</tbody>
</table>

- Ensure it includes
  - Dates of events
  - Times and circumstances of events
  - Details of People involved / their position in the business
  - Details of People who were witnesses and whether you think they would come forward and support you
  - What discriminatory events actually happened including
    - The words said
    - The actions done
  - Any response you made at the time or later

B.7. Your Claim Details

- How - if you have –have you tried to address the matter?
- When, did you try to address the matter?
- Who, if anyone, you have tried to address the matter with at work.
  - Was this verbally?
    - Please write down as much, and as closely as you can remember saying.
  - Was it in writing? (including email)
• Please include copies if you can

• How the person has responded
  ○ Yes - please include copies of letters or emails, or as much as you can remember if verbal response
  ○ No – have you reminded them of their need to respond?

• Include a basic outline of correspondence to date.
  ○ We will ask for copies later if we require them, so please do not throw anything away.

• Indicate if a meeting or disciplinary has been arranged, or court papers have been filed already

• Details of what actions you have taken to date to resolve these matters, or to mediate (lessen) your loss, e.g. have you looked for or found a new job.
Part C. Your Claim & the Employment Tribunal

C.1. What amounts to a claim under the Equality Act 2010

If you are trans, your experience of discrimination, harassment or victimisation might be very clearly linked to your transgender status. Press for Change has seen the following things happen:

- The employer telling all new members of staff of their new co-worker’s transgender status, even though the trans person has informed the company that they have a Gender Recognition certificate and are entitled to privacy according to s.22 of the Gender Recognition Act 2004.
- The wife of a trans man being dismissed because a trans friend of her spouse has made a complaint of discrimination against the business.
- A colleague who stood up for a trans person being sacked.
- A trans person:
  - regularly being given the most dangerous jobs on a site,
  - being given less work than others, when working for an agency.
  - being paid less than their colleagues
  - still being made to use the disabled toilets after 2 years in their preferred gender role,
  - being offered a post, and then having it retracted when they tell the employer they are about to commence gender reassignment,
  - offered a post and then having it retracted when the employer discovers their history because of a minor caution when the person was a teenager, appearing in their Criminal Record check.
  - finding a ‘joke’ Facebook page in their name which has been ‘mocked up’ by your colleagues alleging that the person is a paedophile,
  - arriving at work and finding a magazine of ‘chicks with d**ks’; a ‘used sanitary towel’; or a miniature coffin placed on their desk.
being assaulted by colleagues after informing the employer that they are to transition.

These are all clearly either treating the person to their detriment, or discrimination, or harassment, or victimisation.

There are as many different varieties of discrimination and/or harassment of trans people in the workplace, as there are bullies to think up new methods of torment.

It can also be the case that the discrimination doesn’t seem to be anything specific, but is manifested in simply poor acceptance of you in the workplace. The constant, ongoing, stigmatising of a trans person is as discriminatory as the worse forms of discrimination e.g

- All the lads in the office go for a Friday evening drink but you are never invited,
- You discover the ladies Christmas lunch has happened, but you were the only woman not invited,

Small exclusions or events can combine and effectively become another way of treating you unfairly and unlawfully in the workplace.

C.2. Resolving a Matter Internally

You MUST first try and resolve the matter internally, unless the discriminatory act was so bad, that clearly the internal system will not be suitable.

When might a matter be so serious that you should go to a Tribunal: There isn’t usually a situation where things are so bad that you should go straight to the Tribunals. Even if you have been dismissed from your job, you must first appeal using your employer’s appeal system.

You should only go straight to the Tribunal if:

- You have not been recruited to a job, or
- You have been dismissed, and your employer’s say they do not have an Appeal system for people who have been dismissed, or
- You have used your Employer’s Appeal system but they have decided that you are still dismissed.

Using the internal grievance system is the first way to let your employer know
that you are unhappy with what is happening in your employment.

This is where your **discrimination diary (PART B) is very useful** as it ensures you make your complaint in a logical way, providing all of the required details but not sending a confused, ‘messed’ up criticism of your boss or colleagues, in which the only thing that really comes through is that you are angry.

You must do what your **employer’s Grievance Procedure** requires you to do, and you should ensure you have the support of your trade union rep. if you are in a Union (if not in a Union, see if you can join one, before you start making your complaint).

If you are dissatisfied with the outcome of bringing a complaint using the Grievance Procedure then you will have to think about whether to bring a complaint using the Employment Tribunal system.

The next step is to find out what your Employer thinks they are doing – you do this by sending them a **DISCRIMINATION LETTER (see part D)**.
Part D. Your ‘Discrimination Letter’

If you are going to make a claim for Discrimination at an Employment Tribunal, because the internal systems have failed, the next thing to do before making your claim to an employment tribunal is to send a ‘Discrimination Letter’

A discrimination letter is a way of asking your employer what they are going to do, or what they have done about the discrimination you are or you have experienced.

If you feel you are being discriminated against at work (or when studying for a vocational qualification) you can use the template letter below to complain. It is designed to help you write to the person or organisation you feel has discriminated against you.

Dear [name]

I consider that you may have discriminated against me and/or harassed me /or victimised me contrary to the Equality Act 2010. [Delete the parts of this paragraph that do not apply to you]

I was …. In this paragraph (no.2) you provide the details from your Discrimination Diary. Be brief and to the point. You should bear in mind that you will be asking your employer if they agree with what you say here.

- You should mention the circumstances leading up to the discriminatory treatment or behaviour e.g.
- Give the date, place and approximate time each event happened:
- Give the details of what happened.

I have used the internal Grievance Procedure to ….. Give the details of the Internal Procedures you have used.

You should then add a paragraph about why you think the treatment you have described may have been unlawful discrimination/harassment. You should say what kind of discrimination/ harassment you think the treatment was, and which part of the regulations you think may apply to the kind of discrimination.

For instance which of the following sections of the Equality Act 2010:

-- Section 13. Direct discrimination
-- Section 14. Combined discrimination: dual characteristics
I consider this treatment may have been unlawful discrimination, contrary to the Equality Act 2010 Section XX: Discrimination/ Harassment / Victimisation; in that you have..........................

I would be grateful if you can reply, answering the following questions:

1. Do you agree that my statement in the second paragraph above is an accurate description of what happened?

2. Do you accept that I raised a complaint of [discrimination/harassment/victimisation] contrary to s.XX of the Equality Act 2010 in that you ......................... to me, because I am transsexual?

3. Do you accept that your response to raising that complaint was to..? [include the relevant section of the Equality Act 2010]

If you feel you have been victimised you may find it helpful to include the following questions:

4. Was the reason for my treatment the fact that I had done or intended to do, or that you suspected I had done or intended to do, any of the following:
   - brought proceedings under the relevant regulations
   - gave evidence or information in connection with proceedings under the regulations
   - did something else under or by reference to the regulations
   - made an allegation that someone acted unlawfully under the regulations

5. If not, why do you disagree or what is your version of what happened?

6. Do you accept that your treatment of me was unlawful discrimination/harassment/victimisation by you against me? If not:
   -- a) why not?
   -- b) why was I treated in this way?
   -- c) how far did my gender reassignment affect my treatment by you?

[Use this paragraph to ask any other questions you think may be important. For example, if you think you have been discriminated against by having been
refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job]

Yours sincerely

[Sign the letter]

Your NAME, Your job position

Over the next 2 pages, I have written a complete letter using the template above:

Dear Sirs

I consider that you may have discriminated against me and/or victimised me contrary to the Equality Act 2010.

I was asked to do some photocopying in the main office of my line manager; John Brown on the 1st October 2013, between 3pm and 3.30pm in Mr Brown’s Office, room 3.02 of the Wood Lane site. I am a transsexual man. I joined the company whilst still living as a woman. I transitioned to living as male on the 1st September 2013.

Mr Brown sexually assaulted me. As I was photocopying, he approached me from behind and put his hands around my waist. He moved one hand to my chest area, and the other to my groin area saying “I know what will cure you”, at which point he tried to put his hand inside my trousers. I ran from the room at this point.

I have used the internal Grievance Procedure to bring a complaint against Mr Brown, and though successful in the facts of that complaint, in that it was admitted by Mr Brown that he ‘might have behaved in an inappropriate way’ (Mr Brown’s exact words), you have offered as a solution that I work in the Green End office, where I would be the only person working, and doing a job for which I would be paid £1.20p less per hour than the job I currently have. I have further complained that this is punishing me for Mr Brown’s assault. Your response was to say that “you are the only person to have raised a complaint against Mr Brown and because there were no witnesses, we cannot dismiss him. Therefore if you will not work with Mr. Brown, the only alternative employment we can offer you is a job doing record keeping at the Green End Office.” The salary for the proposed job is considerably less than my current salary.

I consider this treatment may have been unlawful discrimination, contrary to
the Equality Act 2010 Section 13: Direct Discrimination; in that you have chosen to treat me differently to my detriment, to the way you would treat any other employee who experienced such a serious assault in the workplace. I believe this difference is because I am undergoing gender reassignment (which is a protected characteristic according to s.7 of the Equality Act 2010). I assert this because in 2010, a secretary Mrs G, a non-transsexual woman, complained of an un-witnessed sexual assault by a work colleague, but in that case, the work colleague was moved off site, not Mrs. G.

Alternatively this treatment may have been unlawful discrimination, contrary to the Equality Act 2010 s.27: Victimisation, in that you have victimised me for bringing a complaint under the Equality Act 2010 s.26: Harassment, against Mr Brown for sexual assaulting me

I would be grateful if you can reply, answering the following questions:

1. Do you agree that my statement in the second paragraph above is an accurate description of what happened?

2. Was the reason for my treatment the fact that I had raised a complaint of sexually harassment contrary to s.26 of the Equality Act 2010 in that I asserted Mr Brown sexually assaulted me because I am transsexual.

3. Do you accept that your response to raising that complaint was Direct Discrimination contrary to s.16 of the Equality Act 2010, in that I was treated differently when resolving my complaint against Mr Brown, because I am transsexual, or

4. Do you accept that your response to raising that complaint was Victimisation contrary to s.27 of the Equality Act 2010, in that I was treated differently because I raised a complaint under s.26 of the Equality Act 2010 against Mr Brown, of sexually harassment or

5. If not, why do you disagree or what is your version of what happened?

6. Do you accept that your treatment of me was unlawful discrimination or victimisation by you against me? If not:
   a) Why not?
   b) Why was I treated in this way?
   c) How far did my gender reassignment affect my treatment by you?

Yours sincerely

[Sign the letter]

Your NAME, Your Job Position
Part E. Detailing your Claim

When applying to a tribunal, it is essential to include all aspects of the discrimination or harassment you are experiencing. The DISCRIMINATION DIARY and the DISCRIMINATION LETTER you have written will help you greatly with this.

For example, you might complete your application as follows:

<table>
<thead>
<tr>
<th>I have been discriminated against and dismissed by my Employer Mr Z, because of the personal characteristic of gender reassignment contrary to s.7 of the Equality Act 2010, in that I am undergoing gender reassignment. The discrimination was as follows:</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was employed by Mr Z’s company to do xxxxxxxxxxxxxxxx, from 1st September 2008. In January 2010 I informed Mr Z that I would be undergoing gender reassignment and I commenced living and going to work in my preferred gender role on 1 March 2010.</td>
</tr>
<tr>
<td>Date XXXX: My employer, Mr Z, commenced regularly referring to me as ‘that monster, the sex change’ This was witnessed by: The employer, Mr Z’s secretary, Mrs Y</td>
</tr>
<tr>
<td>Date XXXXX: I arrived a work to find copies of a newspaper article entitled “Sex Swaps cost the NHS a fortune” pinned to the notice board (a copy, Evidence item A, of this is attached to my application). This was witnessed by: Mrs C, Mr B, Mr D</td>
</tr>
<tr>
<td>Date XXXX: I made a complaint about the newspaper article [Evidence item A] to Mr Z. Mr Z told me to “grow up and accept the joke” This was witnessed by Mrs Y</td>
</tr>
<tr>
<td>Date XXXXX: Mr Z called me into the office and told me my post was being made redundant as the company had decided to no longer do that sort of work. I was give 3 weeks paid leave, and was to leave the company that day. Two weeks later, an advertisement appeared in the Daily Record, from the company advertising a post – with a different job title- that was almost identical to the work I had been undertaking [Evidence Item C: My work plan]</td>
</tr>
</tbody>
</table>
Evidence Item D: the job advertisement

You can pursue a case for wrongful discrimination in any of the following areas of Employment which allow you to take a case to an Employment Tribunal. You would presumably be saying that these things happened to you because you were trans and they did not happen to other workers.

E.1.1. Recruitment

You can bring a case for Discrimination under the Equality Act 2010

- an employer discriminates against you in the process of recruitment because of a protected characteristic, such as being transsexual

You are under no obligation to inform a potential employer or employment agency that you are trans.

E.1.2. Workplace Practices

Workplace Discrimination takes 3 forms:

- The one incident
  
  ➢ if small on the part of the perpetrator, e.g. failing to include you in part of the workplace planning meetings, or the simply thoughtless, e.g. such as not inviting you to a team meeting in order to ‘protect’ you from a bunch of ‘stupid’ laddish type blokes he knows will be there. You would be very unlikely to achieve a successful claim in these cases.
  
  ➢ if large and particularly damaging to your workplace reputation e.g. being told that your perfectly good work has ‘become terrible since you had your ‘b**lls chopped off”. A claim is far more likely to be successful in these circumstances

- The day to day to day, insidious nigglng small incidents that can destroy your confidence, leaving you with no friends. If you have kept a record, a claim is far more likely to be successful in these circumstances

E.1.3. Trade Union Membership

Trade Union Membership discrimination takes place when an Employer or an
Employment Agency:

- Refuses to let you join a Union
- Will not recruit you because you are a Union member.
- On hearing you are a Union member, threatens to dismiss you or dismisses you
- On hearing you are a Union member, refuses to promote you because you are a member of a Trade Union

### E.1.4. Unlawful Dismissal

Employees whose employment began **on or before the 5 April 2012** will need to **complete one years’ service** before they can claim unfair dismissal.

Employees whose employment begins **on or after 6 April 2012** will usually **need to complete two years' service** with the employer before they can claim unfair dismissal.

You can bring a claim for unfair dismissal **alongside** a claim for Discrimination, Harassment or Victimisation.

#### a. Unfair Dismissal

Unfair Dismissal is defined as: being dismissed and your employer:

- does not have a good reason for dismissing you, **or**
- does not follow the company’s formal disciplinary or dismissal process (or the statutory minimum dismissal procedure in Northern Ireland)

For example your dismissal is likely to be **unfair** if you were dismissed because you:

- asked for **time off to undertake gender reassignment treatment**
- were forced to retire (known as ‘compulsory retirement’) or made redundant and the real reason for either was that you **informed your employer that were about to transition and live permanently in your preferred gender role**
b. Constructive Dismissal

CONSTRUCTIVE DISMISSAL is also a form of unfair dismissal

A constructive dismissal might arise, for example because:

- you informed your employer that you were being physically assaulted and harassed by other employees because you had transitioned. Your employer failed to act upon that information, so you felt you had no choice but to resign to protect your wellbeing, or
- you requested time off work to undergo gender reassignment surgery and it was refused, so you had to resign in order to have the surgery on the dates given to you by the NHS surgeons.

If your Employer dismisses you unfairly (including constructive dismissal), compensation can be given for any successful claim based on your lost earnings, including where appropriate future earnings.

Compensation cannot be claimed for any injury to your feelings in a case which is brought solely for unfair dismissal, you would have to include a case for discrimination – which you clearly could also do in the above circumstances.

If your Employer has ended your contract unfairly, and you have suffered a financial loss, you may make a claim for Breach of Contract through the ordinary County Court.
Part F. Discrimination Claims

**Discrimination claims** – there is **NO CAP** on compensation for actual acts of discrimination, nor on compensation limits and payments which can be made to successful claimants for injury to feelings, or physical or psychiatric injury as a consequence of discrimination. However, awards are not necessarily very high with the average award in 2012 for discrimination being **£12,484**.

### F.1. Typical Compensation Awards for Discrimination

#### 2012 Employment Tribunal Highest Awards for Discrimination

<table>
<thead>
<tr>
<th>Protected Characteristic</th>
<th>Highest Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>£136,592</td>
</tr>
<tr>
<td>Disability</td>
<td>£235,825</td>
</tr>
<tr>
<td>Race</td>
<td>£61,459</td>
</tr>
<tr>
<td>Religion &amp; belief</td>
<td>£18,600</td>
</tr>
<tr>
<td>Sex</td>
<td>£81,400</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>£36,433</td>
</tr>
</tbody>
</table>

Below are the median awards for the various strands of discrimination with the 2011 and 2010 figures for comparison purposes.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>£7,788 ▼</td>
<td>£8,000</td>
<td>£7,250</td>
</tr>
<tr>
<td>Disability</td>
<td>£9,795 ▲</td>
<td>£7,646</td>
<td>£8,000</td>
</tr>
<tr>
<td>Race</td>
<td>£4,500 ▲</td>
<td>£4,000</td>
<td>£7,865</td>
</tr>
<tr>
<td>Religion &amp; belief</td>
<td>£3,000 ▲</td>
<td>£1,000</td>
<td>£6,976</td>
</tr>
<tr>
<td>Sex</td>
<td>£6,789 ▼</td>
<td>£8,986</td>
<td>£8,000</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>£8,000 ▲</td>
<td>£4,500</td>
<td>£4,000</td>
</tr>
<tr>
<td>All discrimination awards</td>
<td>£7,500 ▼</td>
<td>£7,518</td>
<td>£8,000</td>
</tr>
</tbody>
</table>
The highest award made in 2012 was £235,825 in the disability discrimination case of Wilebore v Cable & Wireless Worldwide Services Ltd, in which reasonable adjustments were not made for an employee who was returning to work after having treatment for cancer.

**Note:** the statistics relate to cases which were decided by the Employment Tribunal and do not take into account the many claims that do not reach a full hearing and which, instead, conclude by way of agreed settlement for undisclosed sums.

### F.2. Awards for Gender Reassignment Discrimination

There are no available details of award values in 2012, but PfC normally sees negotiated settlements of between £2,000 and £10,000 for one off acts of discrimination.

In the case of *X v Brighton and Hove City Council [2006/7]*, in which the council had repeatedly discriminated towards a transsexual school teacher, the council was ordered to pay the teacher compensation of £34,765.18 for her loss of earnings and injury to feelings, the Tribunal also made a recommendation that the Council provide any prospective employer or employment agency with a non-discriminatory reference.
Part G. Making Your Claim

G.1. Progress Through the Employment Tribunal

1. Dispute arises
2. Try to sort it out
3. Get advice

- Send Claim to tribunal office
  - Claim not accepted and returned
    - Claim accepted, sent to the respondent and conciliation starts
      - Response accepted
      - No response received or response not accepted
        - Judgment issued

- Case Management
- Hearing held
- Judgment issued
G.1.1. Contacting Acas

You should take advice from Acas (the Advice and Conciliation Service) http://www.acas.org.uk/, your Trade Union representative or the Citizens Advice bureau BEFORE CONSIDERING MAKING A CLAIM.

From 6 April 2014 you should contact Acas before you apply to an employment tribunal. Someone from Acas will work with you and your employer to try to solve the problem at work. This is known as conciliation. The service is confidential and Acas won’t take sides.

You can phone Acas for help and advice on 0300 123 1100.

Nearly everyone should contact Acas before applying to a tribunal. If you think you don’t need to, you may want to get legal advice before you start your claim.

The clock stops on your time limit for applying to a tribunal while Acas tries to settle your dispute.

If you still want to make a claim to a tribunal, Acas will give you an early conciliation certificate number for your claim form.

G.2. Filing the ET1 with the Tribunal

You need to fill in form ET1 to make a claim. It is available on the Ministry of Justice website along with guidance on how to complete it.²

You MUST return the ET1 claim form to make your claim within 3 months of

- the date of your employment ending or
- the date of the last incident of discrimination or other events that you are complaining about,

Once you have completed and sent in your ET1 form, it will be reviewed and you will be advised in writing by the Tribunal service whether your claim has

been accepted as having potential validity and able to go ahead.

**You are able to withdraw or settle your case at any point during the process.**

Employment Tribunals can ‘*strike out*’ a case if they think it is too weak, at a pre-hearing, meaning the case will not proceed. They can also order you to pay costs if they hear your claim but then think you have behaved ‘*unreasonably*’ during the case.

---

**G.3. Acas**

If your case is accepted a copy of your claim will be sent to your Employer and also to **Acas** (the Advice and Conciliation Service).

*Your Employer must reply within 28 days.*

**Acas** has the job of trying to find a way of you and your employer coming to an agreement and reaching a settlement in your case. An Acas “conciliation” officer will normally contact you and discuss your case at this point. They will see if they can help resolve your case without it going to an Employment Tribunal. In cases of unfair dismissal Acas can also offer “arbitration” services.

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**G.3.1. Mediation**

An Employer can ask a claimant who has bought a Tribunal claim to take part in **Mediation** before any hearing. You are not obliged to do so, and you should seriously evaluate the implications of doing so. Some **Mediation can be legally binding** i.e. you have to agree in advance that you will accept the decision of the Mediator.

In such cases, you **have no right to appeal** the mediator’s decision.

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**G.4. The Tribunal’s Decision**

If your case reaches the tribunal the case will usually be heard by a panel of 3 people which will include a qualified Employment Judge.

*If you disagree with an ET’s decision* about your case you **can appeal** if:

- There is found **new evidence which the Employer deliberately hid**; or
• the Tribunal has made an **error in law**; or

• if their decision is *‘perverse’* (i.e. a decision was reached that no *‘reasonable’* Tribunal could have made on the evidence in front of it).
Part H. Valid Reasons for Dismissal

H.1. The Six Legal Ways of Dismissing and Employee

There are 6 reasons that an employer can rely upon to lawfully terminate your contract of employment. They are that:

1. You are not Capable of doing your job;
2. You have committed a series of acts of Misconduct or a single act of Gross Misconduct;
3. Your position is Redundant;
4. You have reached Retirement age;
5. By continuing to employ you, your Employer would contravene a Duty or a Restriction, or
6. For Some Other Substantial Reason (SOSR).

We will cover reasons 1, 2, 3 and 6 below

H.1.1. Capability or Performance

If you are unable to do their job properly, you can be dismissed. Your Employer must ensure that they follow a correct and fair procedure before dismissing you because of your capability or performance.

There are various reasons why an employee may be unable to do their job properly.

a. You may not have the correct qualifications or technical skills.

In these circumstances, before considering dismissal, your Employer should ensure that you are given the opportunity to improve your performance, by offering you training. If your Employer has not given you any opportunity to improve, the dismissal is likely to be unfair.

If you do not have the correct qualifications or skills, (so long as you did not lie
about your qualifications or skills when being recruited) then before considering dismissal, your Employer should ensure that you are given the opportunity to improve your performance, by offering you training.

### b. You have an illness or injury making your job difficult

If you are consistently absent from work because of a genuine illness or injury, your Employer should go through the appropriate procedures, or the dismissal may be unfair, or you may have been discriminated against on the basis of a disability.

If your incapability is because you are ill, your Employer:

- Should speak to you about the state of your health and how long your injury or illness is likely to last.
- May need to consider asking for your permission to contact your doctor.
- Should also consider alternative work for you.

### c. You may be incompetent.

You may have made a number of serious mistakes at work, or

You may not be performing the job satisfactorily or

You may be unable to reach reasonable targets.

If you are incompetent, your Employer should only dismiss you if they have given you:

- a series of warnings about your performance and
- the opportunity to improve.

### H.1.2. Misconduct

An Employer may provide many reasons to justify dismissing you for misconduct.

You may be dismissed for

1. a Series of Incidents of Misconduct, or
2. for one Serious Act of Misconduct – known as Gross Misconduct.
3. Before dismissing you for a Series of Misconduct, your Employer should normally give you a series of warnings:

- A verbal warning, then
- A first written warning, then
- A final written warning

4. You can be dismissed WITHOUT NOTICE for One Act of Gross Misconduct. Your Employer MUST have REASONABLE GROUNDS for believing that you have committed the acts or act of gross misconduct.

Examples of acts of GROSS MISCONDUCT are:

- Theft;
- Attacking a fellow employee;
- Sending abusive or inappropriate emails;
- Abusing expenses;
- Corruption;
- Fiddling the books;
- Drug or alcohol abuse;
- Discrimination against other employees.

Even though you can be dismissed ‘on the spot’ for an act of gross misconduct, your Employer must still ensure that they follow fair procedures before dismissing you for gross misconduct.

Therefore the investigation must be fair, thorough and not flawed in any way.

a. The Test for Reasonable Belief in Gross Misconduct

British Home Stores v Burchell [1978]ET, 1980 [EAT] provides the test for what is considered to be an Employer’s reasonable belief that an employee has committed an act of Gross Misconduct.

In British Home Stores v Burchell the employee, Mr Fisher had been accused of pilfering from his till point. After an internal investigation, he was dismissed for gross misconduct. The police were called, but after investigation the police decided there was not enough evidence on which to prosecute him. Fisher took a case for unfair dismissal to the Employment tribunal. The tribunal held that his conduct did not amount to gross misconduct justifying common law summary
dismissal.

Fisher’s employer appealed the decision to the Employment Appeals Tribunal. The EAT decided that the tribunal had been wrong and upheld the appeal, saying that they accepted that the employer genuinely believed on reasonable grounds, following a reasonable investigation that Mr Fisher was guilty of the misconduct of which he had been accused. It also clearly accepted that dismissal fell within the range of reasonable responses open to them.

Accordingly the Burchell test requires an employer to follow a fair procedure. If after investigation, dismissal would fall within the range of reasonable responses to what they reasonably believed the employee had done, the dismissal would be considered to be fair.

b. Your Employer’s ‘Musts’ to Ensure Fair Dismissal for Misconduct.

If your Employer believes that you have committed an act of gross misconduct

- Your Employer should suspend you, on full pay, pending an investigation.
- The suspension should be as short as possible.
- Your Employer should then carry out a thorough investigation into the alleged act of gross misconduct.
- This investigation will normally require the employee to get the employee’s version of events.
- If, following the investigation, if your Employer still believes that you have committed the act of gross misconduct, you should then be invited to a disciplinary meeting.
- Before the meeting, your employer must ensure that you are given all of the evidence against you, in order that you are in a position to defend yourself properly at the meeting.
- After having listened to your side of the story, at the disciplinary hearing, your Employer must then decide what decision to make.
- If your Employer still believes that you are guilty of gross misconduct, your Employer can:
  - Issue you with a warning (either verbal or written), or
  - Dismiss you.
However, your Employer must show that the punishment (warning or dismissal) was within the “band of reasonable responses”, in other words, the dismissal must not be too harsh for the misconduct.

### H.1.3. Redundancy

You are redundant if you become **surplus to requirements**. An employer can fairly dismiss you if you are redundant.

You may be able to challenge your selection for dismissal if you can show:

- That the redundancy is not genuine; or
- That you have been selected for redundancy for **an inadmissible reason**, e.g. you have been selected for redundancy because you are intending to undergo gender reassignment.

In **P v S & Cornwall County Council [1996] ECJ, Case C-13/94**, P was an employee in a college operated by Cornwall County Council. P was hired as a male employee, but later informed the College head (S) that she was commencing gender reassignment. After taking a short holiday, she received a letter to say that her job was being made redundant. She later saw the College had advertised a very similar position. The **UK Employment Tribunal** had found that the real reason for the ‘redundancy’ was that she was intending to undergo gender reassignment.

The **European Court of Justice** ruled that there had been a violation of the principle of equal treatment. The principle of equal treatment meant that men and women should be guaranteed the same conditions without discrimination on grounds of gender, including changing from one gender to another.

### H.1.4. Exemption to Trans Employment Rights

For Trans people there are areas of employment which are ‘exempted’ in the Equality Act 2010 from having to employ transsexual people. These are

- **Single Sex Services**, and
- the **Armed Forces** where combat readiness is a concern.

Discrimination will only be lawful where it can be **Objectively Justified**, in other words where it is a proportionate means of achieving a legitimate aim.
The exceptions can only be lawfully applied in exceptional circumstances, and the fact that a person has a Gender Recognition certificate may be a factor to be taken into account when applying the objective justification test.

For example; a Women’s Crisis Centre may claim that they will not employ a transsexual person because they are exempt from doing so under the provisions of the Equality Act 2010.

**Example 1:** a 35 year old Trans woman, who

- has been living as a woman since her young teen years,
- is qualified as a counsellor,
- has a Gender Recognition certificate, and
- has successfully worked at other Crisis centres for homeless women applies for a post at the Centre as a counsellor. The Women’s Crisis centre would find it hard to objectively justify claiming the exemption under the Act.

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**Example 2:** A qualified specialist radar technician for the NAVY informs ‘her’ commander that she is transitioning from female to male, and wishes to continue in the Navy as a man. As both male and female radar technicians serve on board ships which are active in combat settings, and the person has already served in such settings as a woman, the Navy would find it hard to objectively justify insisting that he resigns from the navy on his transition.
Part I. Employment Tribunal & Appeal Tribunal Fees

I.1. Fee Changes from 1st August 2013

The Employment Tribunals and Employment Appeal Tribunal Fees Order 2013, proposes that from the end of July 2013, for the first time, all claims or appeals to the Employment Appeals Tribunal will attract a fee on a sliding scale depending on the type of claim (there will be a two tier structure) and on whether there is a single or multiple claimants.

The fee will be payable online or through a centralised processing centre on issue and before the hearing.

The Government says that it hopes in this way to encourage parties to resolve their disputes prior to bringing a claim or before a hearing. They say:

Fees are part of the Government’s programme to promote early resolution of disputes in order to help individuals and companies to get on with their lives and businesses. The intention is to encourage people to look for alternatives - like mediation - so that tribunals remain a last resort for the most complex cases.

With the tribunal service having cost the Government an estimated £84m in 2011/2012 it is clear what the motivation is for the changes.

I.1.1. The Fees Structure

<table>
<thead>
<tr>
<th>Table 1: Fees For Court Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Service</strong></td>
<td><strong>Cost</strong></td>
</tr>
<tr>
<td>Mediation with a judge</td>
<td>£600.00</td>
</tr>
<tr>
<td>Employment Tribunal hearing</td>
<td>£390.00</td>
</tr>
<tr>
<td>Employment Appeal Tribunal hearing</td>
<td>£1200.00</td>
</tr>
</tbody>
</table>
I.2. Remission of Fees

I.2.1. Remission 1: Full Remission If On Means Tested Benefits

Remission of Fees can be obtained for low earners. Full remission of fees is based on receipt of one of the benefits listed below (specified means-tested benefit). If you are in receipt of one of the benefits listed, complete the form contained in the leaflet: **EX160A Court fees - Do I have to pay them?** Available from HM Tribunals Service at [http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf](http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex160a-eng.pdf)

To obtain remission, you must give the court an official letter which must show:

- your title,
- full name,
- address and postcode and
- Confirm the benefits you currently receive.

The table below shows the benefits accepted by the court as proof of low income, and the form the letter must be for it to be accepted.

**Table 2: Benefits Based Full Remission Evidence**

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Evidence letter from</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income-based Jobseeker’s Allowance</td>
<td>Job Centre Plus /Department for Work and Pensions (DWP)</td>
<td>No more than one month old</td>
</tr>
<tr>
<td>Income support</td>
<td>Job Centre Plus /Department for Work and Pensions (DWP)</td>
<td>No more than one month old</td>
</tr>
<tr>
<td>Working Tax Credit but not in receipt of Child Tax Credit</td>
<td>Her Majesty’s Revenue and Customs (HMRC)</td>
<td>Referring to the current financial year</td>
</tr>
<tr>
<td>Pension Credit guarantee credit</td>
<td>The Pension Service /Department for Work and Pensions (DWP)</td>
<td>Assessed Income Period should cover the current financial year</td>
</tr>
<tr>
<td>Income-related Employment and Support Allowance</td>
<td>Job Centre Plus /Department for Work and Pensions (DWP)</td>
<td>No more than one month old</td>
</tr>
</tbody>
</table>
Applicants must make sure they have all required evidence, correct and within date, before arriving at court or sending the application in the post. Failure to provide evidence will result in the application being refused and the full fee being payable.

### 1.2.2. Remission 2: Full Remission Based On Annual Income

Remission 2 is **full remission based on your annual income before tax and other deductions** (known as gross annual income). If you do not receive one of the above benefits listed, you can still apply for a remission based on having a low **gross** annual income.

You must provide evidence of your gross annual income and that of your partner, if you a couple, are assessed jointly. The number of dependent children you have is included in the assessment. The joint income must be no more than the amounts shown in the table below for you to qualify for a full remission.

<table>
<thead>
<tr>
<th>Gross annual income with:</th>
<th>For a Single person</th>
<th>For a Couple</th>
</tr>
</thead>
<tbody>
<tr>
<td>No children</td>
<td>£13,000.00</td>
<td>£18,000.00</td>
</tr>
<tr>
<td>1 Child</td>
<td>£15,930.00</td>
<td>£20,930.00</td>
</tr>
<tr>
<td>2 Children</td>
<td>£18,860.00</td>
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</tr>
<tr>
<td>3 Children</td>
<td>£21,790.00</td>
<td>£26,790.00</td>
</tr>
<tr>
<td>4 Children</td>
<td>£24,720.00</td>
<td>£29,720.00</td>
</tr>
<tr>
<td>For each additional child</td>
<td>£2,930.00</td>
<td></td>
</tr>
</tbody>
</table>

### 1.2.3. Remission 3: Full Remission Based On Annual Income

If applying for a remission under Remission 3, a member of court staff will work out your **disposable** monthly income based on the figures and evidence you have given to the court.

The remission, i.e. amount of the court fee that you will not have to pay, is based upon your **net disposable income**; that is everything left after basic costs have been paid out. Your partner’s income has to include in the calculation.

The calculation of your disposable monthly income is done by adding up the tables **given on the next page**, and taking your monthly expenses away from your net monthly income.

If after working out, **your disposable income is less than £50 per month** you will be
allowed a full remission and you will not have to pay the fee.

If your disposable income is more than £50 you will have the fee reduced according to the amount of disposable income you have. However, the scales are quite generous and you have to have a monthly disposable income of more than £880 to pay the entire Employment tribunal fee, and a monthly disposable income of over £990 to have to pay all of the Employment Appeal tribunal fee.

Most people who are working would do well to spend time working out what fee remission they might get according to the tables below. For example a medium earning family on with a monthly take home pay of £2500 and a mortgage of £450, will end up paying no fee as they will get full remission of fees.

**EXAMPLE 1: Man & Wife, 4 Children, Monthly Net Pay of £2500.**

<table>
<thead>
<tr>
<th>NET MONTHLY INCOME</th>
<th>MONTHLY EXPENSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid/Self-employment of self and partner (after Income Tax and National Insurance and Pension contributions have been deducted)</td>
<td>Housing costs 450</td>
</tr>
<tr>
<td>Income from people living lodger or tenant, nondependent children or relative</td>
<td>Fixed allowances</td>
</tr>
<tr>
<td>Any Pension: state, private or occupational</td>
<td>• partner 244</td>
</tr>
<tr>
<td>Child benefit</td>
<td>• dependent children (each child – example: 4 children) 244</td>
</tr>
<tr>
<td>Other benefits</td>
<td>• general living expenses (£315) 244</td>
</tr>
<tr>
<td>Money from rents, shares, bonds or other financial arrangement</td>
<td>Child maintenance Under a court order, voluntary agreement, or Child Support Agency 10</td>
</tr>
<tr>
<td>Any other income</td>
<td>Child care expenses (nursery fee/ child minder/ after school club etc. if both parents work) 620</td>
</tr>
<tr>
<td><strong>Total net monthly income:</strong> A= 2560</td>
<td>Payments under a court order 0</td>
</tr>
<tr>
<td></td>
<td><strong>Total net monthly expenses:</strong> B = 2520</td>
</tr>
</tbody>
</table>

Thus for Example 1: Disposable Income =A – (minus) B = i.e. £2560 -£2520 =£40

disposable monthly income: Thus, this couple will not have to pay any fee
I.2.4. Rules – Proving Your Monthly Expenses

**Housing costs:** The total you pay for your mortgage, rent or board per month. This amount must not include any council tax payments or any other utility bill payments. The evidence given to the court must be current and show the amount you pay and how often. Evidence can be one of the following:

- Mortgage statement
  - including extra costs for ground rents and service charges for a flat
  - can be for several mortgages in addition to your main home; or
- Tenancy Agreement for rented properties; or
- Rent book signed by the landlord; or
- Receipts from board payments; or
- Rent statement from landlord; or
- Bank statements.

**Fixed allowances:** These are the pre-set amounts that you are allowed to claim for your:

- Partner: £159 a month. ONLY enter this figure if you are part of a couple.
- Dependent Children: £244 a month per child. ONLY enter this figure if you have dependent children.
- General Living Expenses: £315 a month. ONLY enter figure if you have also entered monthly housing costs.
- Child maintenance: If you pay child maintenance, you must give the court copies of the document(s) that show the amount paid and how often it’s paid, for each child that maintenance is paid for. The evidence must be in the form of:
  - Sealed court order; or
  - Child Support Agency Assessment; or
  - Signed Voluntary Agreement or letter of agreement (both to be signed by both parties).

**Childcare expenses:** If you have dependent children, you may pay for childcare. This can include nursery, pre- or after-school care or a child minder, but does not include school fees.
You should give the court evidence of any child care payments in the form of:

- Receipts from a nursery; or
- Proof of payments to a pre-school or after-school club; or
- Receipts from a child minder
- Payments under a court order: If you have a court order or judgment (excluding orders for child maintenance) against you, which requires you to make payments, enter that payment, per month. Evidence of these payments should be in the form of:
  - A sealed court order giving the payment details; and
  - receipts of payments made to a claimant or the court.

**With fees for mediation with a judge** being £600, if you cannot reach a settlement with your employer, then it is well worth doing the sums to check whether you will get any fee remission under the Remission fee system. Very few people have almost £1000 of free disposable income a month.

### 1.2.5. Refunds

You can apply for a refund (known as a retrospective application) if you have paid a court fee within

- the last six months and think that you would have been granted a remission at the time you paid the fee.
- You can only apply for a refund at the court where you paid the fee
Part J. Proof Of Income

To qualify for Remissions 2 or 3, you must give the court the following:

- evidence of your name,
- evidence of your address,
- details of your dependent children,
- evidence of your status e.g. married, civil partner, employed, pensioner etc.

AND

- Evidence of Your Income

For Remission 2 you must give evidence of your annual income BEFORE tax and other deductions (your gross annual income) for the 12 months preceding your remission application. You must also include evidence of the gross income of your partner.

For Remission 3 you must give the court evidence of your monthly income AFTER tax and deductions have been taken (your net monthly income).

The court requires the following types of evidence of Income from Applicants:

a. All Applicants

Bank statements: You must give the court your last three months’ bank statements (and your partner’s if you apply as part of a couple) [You are permitted to give the court online bank statements.], AND

If in PAID EMPLOYMENT: Yours and your partner’s original wage slips from all of yours and your partners jobs. These should be:

- If Paid monthly – the last three of each month’s wage slips, no more than four months old; or
- If Paid weekly - last full month of wage slips, no more than six weeks old.

AND You must include details of any cash-in-hand work on the application form.
If SELF EMPLOYED - You must give the court:

- Your most recent tax return (Self Assessment); AND
- Your most recent HMRC Self Assessment Tax Calculation;

OR

- Other proof of current income.

b. AND Income from people living with you

You must supply details of any money you receive for rent, board, or contribution to the household bills etc; from any person living in your home.

You must give the court a letter from the person who pays this money confirming the arrangement, and how much they pay and how often they pay. The letter must be dated within the last month.

c. AND Pension

You must give the court current notifications, letters or statements confirming all of the payments you receive for state, private or occupational pensions.

If you are receiving Pension Credit guarantee credit you will receive a full remission if you apply under the Remission 1 process (see above).

d. AND Child Benefit and Other Benefits

Evidence must be provided of any Benefit payments that you are receiving [except those Excluded Benefits listed below].

You must give the court a benefit entitlement notice or letter, dated within the last month confirming how much is currently being received and how often the money is paid. The court will also accept a current Child Benefit award notice as proof.

BENEFIT AWARDS

If receiving any of the following benefits, you will qualify not to pay any fees by applying under the REMISSION 1 scheme

- Income-based Jobseeker’s Allowance
- Income support
• Working Tax Credit but not in receipt of Child Tax Credit
• Pension Credit guarantee credit
• Income-related Employment and Support Allowance

**EXCLUDED BENEFITS:** You do not need to include any details of these benefits as your income, if applying for REMISSIONS 2 or 3

- Attendance Allowance
- Back to Work Bonus
- Budgeting Loan
- Carer’s Allowance
- Cold Weather Payment
- Community Care Grant
- Constant Attendance Allowance
- Council Tax Benefit
- Crisis Loans
- Funeral Benefit
- Disability Living Allowance
- Disabled and Severely Disabled elements of Child Tax Credit
- Exceptionally Severe Disablement Allowance
- Financial support under an agreement for the foster care of a child
- Direct payments made under Community Care, Services for Carer and Children’s Services
- Housing Benefit
- Independent Living Fund Payments
- Severe Disablement Allowance

e. **AND Other Income**

All Applicants **MUST PROVIDE** details of any of the following if they have them:

• Money from rents, shares, bonds or other financial arrangements

If you receive rental income from any properties you must give the court tenancy agreement(s) or lease(s) for each property showing the rents currently being paid
and how often.

- Stocks, shares, bonds or any other financial arrangement: If you receive income from stocks,

You must give the court current statements of share certificates or of any other financial arrangement, showing what they are and how much income you receive.

- Child maintenance payments

You must give the court an original copy of the document(s) that shows, for each child, any child maintenance you receive and how often. This must be either a;

- Sealed court order; or

- Child Support Agency assessment; or

- Signed Voluntary Agreement (signed by both parents).

**ANY OTHER INCOME:** If you receive any other income not listed here, such as selling goods for profit privately or online auctions, you must give the court evidence that shows the amount of income (the profit) you have received, how it is received and how often.
Part K. Remission 3 Contributions Table

This table shows how much of the court fee you will have to pay (contribution) if your monthly disposable income is calculated to be £50 or more. If your monthly disposable income is calculated to be less than £50, you do not have to pay a court fee.

<table>
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<tr>
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</tr>
</tbody>
</table>

*Each range ends with 0.99p. The contribution will increase by £5 for every additional £10 over £919
Part L. National Support Organisations

PRESS FOR CHANGE: BM Network London WC1N 3XX
Helpline: 08448 708165 (Mon-Thurs 10am – 5pm)
‘The UK’s Leading Experts on Transgender Law’.
Campaign for equal civil rights for trans people. Provides free legal help and advice for individuals, information and training for professionals, speakers for groups. 
Produces research and publications.
http://www.pfc.org.uk and http://www.transequality.co.uk

GENDER TRUST: PO Box 3192 Brighton BN1 3WR.
tel: 01273 424024 (office hours), Helpline: 07000 790347 http://www.gendertrust.org.uk
Offers advice and support for ‘male to female’ Trans women. Also partners, families, carers and allied professionals. Has a membership society and produces a magazine: "Gems".

FTM NETWORK: 35a Fore Street, Wellington, TA21 8AG
Currently No Helpline: www.ftm.org.uk
Offers advice and support to "female-to-male" trans men, and to families and professionals. Also a "buddying" scheme, camping and hiking and other sports. 
Newsletter: "Boys Own" and an annual national meeting.

BEAUMONT SOCIETY: 27 Old Gloucester St, London WC1N 3XX.
Provides advice and support for cross dressers, but also has some trans women as members. Runs local groups and produces a newsletter and publications.

MERMAIDS: BM Mermaids London WC1N 3XX.
Helpline: 0208 1234819 (12 noon - 9pm when staffed). http://www.mermaidsuk.org.uk
Support and information for children and teenagers who are trying to cope with gender identity issues and for their families and carers. Please send SAE for further information.

DEPEND: BM Depend, London WC1N 3XX
No Helpline http://www.depend.org.uk
Support and information for children and friends who are trying to cope with the gender identity issues of a family member or friend.
Part M. Have You Found This Guide Helpful?

Then please consider making a donation to Press for Change (PfC)?

Press for Change survives through donations from supporters and members of the transgender community. Working on research, attending meetings and campaigning always means we have a lot to do, so if you could spare any small amount of money for a donation you can ensure every penny is used wisely.

**WHY WE NEED DONATIONS**

Since its formation in 1992, Press for Change has received and spent around £45,000 in donations, which equates to just over £2,000 a year. That makes us almost certainly one of the most frugal lobby groups in existence — operating for twenty years on this tiny amount of money has been a massive challenge in itself. There are many more things PfC would like to be able to do more on but we are limited to our resources financially.

**YOU** can help us continue to provide a service of real value to those that are transgendered or questioning their gender identity.

With the money donated to PfC we’ve achieved changes in legal protection and support for trans people which were all at one time considered impossible dreams. Legislation and judicial case law affecting employment rights, the right to NHS treatment, and the Gender Recognition Act have all been shaped by the influence of PfC lobbying and advising politicians and courts. That work still goes on to influence the shaping the protections which we now have with the equality act, but that still need to go further. Every day we are in some kind of contact with civil servants, national agencies and broadcasters arguing a sound case for the all-round improvement in the way that trans people are supported and enabled to live productive discrimination-free lives.

Most of this work is carried out by volunteers and involves travel and other out-of-pocket expenditure — all of which needs to be found to cover and ensure those volunteers are credited for the time that they put in from somewhere.

Please Consider Making A Donation – details are on the next page.
HOW TO MAKE A DONATION TO PRESS FOR CHANGE

**PayPal:** You can donate using your CREDIT or DEBIT CARD. We can now accept payment of over £10 using Paypal. You do not need a paypal account to use this method of payment. Please go to [www.paypal.com](http://www.paypal.com) & go direct to Paypal. The payments are to be made to Press for Change, the required payment email is office@pfc.org.uk

**By Cheque:** You can WRITE A CHEQUE in favour of Press for Change and send it to our address: Press for Change, Yewbank House, 24 Mauldeth Rd, Stockport, SK4 3NE, United Kingdom

**By Online Banking:** You can pay direct, including making a regular standing order payment, using your Online or Telephone Banking from the UK or anywhere in the world, direct to our bank. Simply use your online or telephone banking system, or visit or write to your bank and ask them to transfer the amount you want to give to:

Press for Change,

c/o Natwest Bank PLC,

PO Box 4115, Hornchurch, Essex, RM12 4DF

Bank Sort code: 60 24 77

Account number: 19243766

If making an international donation then you will also need the following IBAN and BIC/Swift Codes

Iban number: GB54NWBK60247719243766

BIC/Swift Code: NWBKGB2L

Please Note, the bank makes a £7 charge for each credit received from the international banking system (CHAPS), so please bear this in mind when deciding how much to give.

If you need an acknowledgment then email us at office@pfc.org.uk and we’ll confirm when your payment has been cleared.
An organization offering free, confidential and non-judgmental advice, information and support to all family members, partners, spouses and friends of transsexual people.

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