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Transgender discrimination: a recent employment tribunal case decision

Employment Tribunal decision: X v Brighton and Hove City Council [2006/7]

Council ordered to pay **£34,765.18** for twice victimising and discriminating against a transgender ex-employee

In June 2007 the Brighton Employment Tribunal ordered Brighton and Hove City Council to pay compensation of £34,765.18 to a former employee, in a case supported by the Equal Opportunities Commission. The identity of the teacher is subject to a restricted reporting order by the Tribunal.

The compensation order followed the decision of the Tribunal in November 2006 that Brighton and Hove City Council, and one of its senior managers, had discriminated against and victimised the former teacher on grounds of gender reassignment.

In 2003 the teacher registered with a teacher requirement agency in order to seek work and sought a reference from her previous manager at the Council. However she lost the opportunity to obtain work as a result of her previous manager revealing her change of gender to the recruitment agency, despite a request that this should not be disclosed.

Her previous manager initially delayed responding to the request for a reference. When he did respond, he faxed a secret side memo that disclosed her former name, stated her previous gender, and referred to her as both "he or she", "him" and "her". The side memo also revealed to the agency that she had previously raised proceedings alleging discrimination and speculated that he had "no reason to suppose that he or she is any less effective a teacher as a result of the gender change, unless publicity around the case has caused social difficulties which make effective teaching a problem". He also offered to have

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further telephone conversations with agency staff.

This treatment was held by the Tribunal to amount to discrimination and victimisation of the teacher, for which the Council and her previous manager were liable.

It was only after the teacher had contacted the agency directly some months later, because the agency had refused to provide her with any work, that she discovered the existence of the secret fax. The Council had failed to reveal its existence when originally asked.

In 2005, in the absence of having received any employment, the teacher approached her previous manager for a reference again but was refused. The Tribunal found that both the Council and the manager had further discriminated against and victimised the teacher by refusing the second reference request and by refusing to hear her grievance over the refusal. The Council also failed to adopt existing Criminal Records Bureau procedures for transgender people, and ignored EOC guidance on the employment of transgender people.

Although the Council applied for a review of the ET's findings of discrimination and victimisation, and then lodged an Appeal, both were unsuccessful.

As well as awarding the teacher compensation of £34,765.18 for her loss of earnings and injury to feelings, the Tribunal made a recommendation that the Council provide any prospective employer or employment agency with a non-discriminatory reference.

The EOC's gender agenda in respect of transgender discrimination

In October 2007 the work and remit of the Equal Opportunities Commission passes to the new Commission for Equality and Human Rights. We have taken stock of sex equality in Britain to highlight the key issues where future action is still required, which we are calling the Gender Agenda.

Eliminating discrimination against transgender people is a key goal of the Gender Agenda.

The EOC recognises that transgender people face the same gender problems as other women and men but often face huge additional prejudice on a daily basis. Whilst some progress has been made in improving rights for transgender people, there is still more to be done, to challenge specific discrimination and victimisation of transgender people, which remains deeply rooted.

To tackle these concerns, we want the Commission for Equality and Human Rights to

make sure that in 10 years time:

- Discrimination, harassment and stereotyping of transgender people has reduced significantly and is on course to be eliminated;
- Transgender people have equal protection under the law to other men and women and the legal definitions cover everyone who identifies as transgender;
- Public policies and services, including health and education, are meeting the needs of transgender people;
- Transgender people enjoy the same level of respect as other men and women, and employers and service providers have a good understanding of their concerns.

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