There is no UK legislation that enshrines in law that men must use the male toilets and women the Ladies Toilets. However on private premises the manager or licensee has the right to determine entry to the premises and the right to decide who uses which toilet and any other gendered facilities such as changing rooms etc. As others have said good practice is to let people use the facilities appropriate to the way they present and as those who have the protected characteristic of Gender Reassignment should not be discriminated against purely because they are Transsexual, but a proportionate solution found. (The Equality Act 2010 defines a person as having the protected characteristic of gender reassignment (= Transsexualism) if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.)

As it is often hard to distinguish between those in the early stages of transitioning and those who are Transvestities / Cross Dressers it's also best to use this "Best Practice" to cover all to avoid breaching the legislation. 

Also it would be much more dangerous for a Trans* Female to use the Male facilities and some might see that as the Trans* Female apparently indulging in importuning, which raises issues of safety and the duty of the premises management not to endanger those using their premises.

I think it is far more likely that a Trans Woman in the male toilets would be abused or attacked, than a Trans* woman would behave inappropriately in the Ladies Toilets - there is almost no evidence of Trans* Women behaving inappropriately in the ladies, If they do they should be ejected in the same way any other woman misbehaving would be.

There is also the serious issue of Trans* men using the Male facilities which could be dangerous for them if they are recognised as still female bodied.

Would Women be happy with Trans Guys using the Ladies’ especially if they have started to grow facial hair and their presentation is very masculine?

Does it really matter when most just want to discreetly use the cubicle, wash their hands and leave quietly? It's a pity we don't have more unisex facilities where it would not be an issue.

The best way to be protected against discrimination under the 2010 Equality act is to go to your GP and have a discussion about how you are considering transitioning, you don't have to start the process to be protected once you've had such a conversation.


"The Equality Act 2010 contains exceptions to the general prohibition of sex discrimination which allow the provision of single-sex or separate-sex services for men and women. A business or service provider can decide whether and how a transsexual person can use such a service, depending on all the circumstances. The decision must be 'objectively justified' – in other words, it must be a fair and reasonable way of achieving a legitimate aim.

Can a man just put on some lipstick and try to get into the ladies’ toilet?

No. Providers of separate-sex services (such as toilets, changing facilities or saunas) have the right to make decisions on what facilities transsexual people can use – but remember that this is a very sensitive issue and it is important that you take the views of the transsexual person into account when making the decision. However, a man who just puts on lipstick but does not wish to change his sex is not a transsexual person who is undergoing the process of changing his gender, nor is he likely to be thought to be transsexual, so he cannot rely on this protection."

Here is good guidance for Colleges and Universities from the Equality Challange unit:

"**Which toilets should trans people use when they are transitioning?**

Some of our female staff have complained about their colleague, who has recently transitioned from male to female, using the women's toilets. They say they feel uncomfortable about there being a man in a women only area, and don't accept their colleague as a 'real' woman. How can I support the staff member who is transitioning, while making sure that other female staff do not feel uncomfortable in her presence?

A trans person should have access to 'men-only' and 'women-only' areas - such as changing rooms and toilets - according to the gender in which they present.

It is not acceptable to restrict a trans person to using disabled toilets or other unisex facilities. Institutions as both employers and service providers have a legal and ethical duty to support trans staff and students. Gender reassignment is one of the nine protected characteristics within the Equality Act 2010.
The definition of gender reassignment within the Act gives protection from discrimination to a person who has proposed, started or completed a process to change their sex. Bullying, harassment and discrimination are unlawful and should not be tolerated in any institution. Policies should protect the rights of trans people to dignity at work and in their studies.

**Educating colleagues**

It may be helpful to explain the situation to work colleagues or students who use the facilities; however this should only be done following full consultation with the trans person, and if the trans person concerned wants this conversation to take place. The trans person may want to be involved in this meeting and they may also want to input into how their transition is discussed with colleagues.

It is important that colleagues gain an understanding of gender identity issues and the importance of a trans person living in their preferred gender in their daily life, including the use of single-sex facilities.

There should be an opportunity for other members of staff or students to ask questions, either of the person hosting the meeting or, if they are comfortable, the person concerned. It may be helpful to circulate some basic ground rules on showing respect for trans people; some ideas can be found in Appendix C of ECU's guidance on supporting trans staff and students.

Staff should be free to ask questions and discuss transitioning in detail, as many people will have no experience of this in their personal or professional life, and it can be quite difficult for them to understand. Once you have done this, you should be clear that further harassment will not be tolerated, and that the university will take disciplinary action if necessary.

In the longer term for a range of equality-related reasons, you might like to consider the provision of private cubicles within existing changing facilities where they are not currently provided and making some toilets unisex.

Copyright 2014 Equality Challenge Unit |
- See more at: [http://www.ecu.ac.uk/your-questions/which-toilets-should-trans-people-use#sthash.6nbxmC1A.dpuf](http://www.ecu.ac.uk/your-questions/which-toilets-should-trans-people-use#sthash.6nbxmC1A.dpuf)


"**Gendered facilities - which ones to use and when?**

The use of toilets and other gendered facilities can occasionally be an issue in the workplace, particularly during the early stages of transition if colleagues were familiar with the employee in their former role.

It is the commonest concern to be raised. However it is not difficult to address. The usual point for starting to use opposite gender facilities will be the day the employee starts coming to work in the new role.

**Practical tips for dealing with concerns**

Provided any anxieties are approached intelligently the usual experience is that concerns can soon be overcome – at worst by agreeing, as a temporary compromise measure, to reserve one set of facilities for colleagues who may have strong objections to sharing facilities used by the transsexual employee. Where locker or shower facilities are open plan then it is good practice to review this and, at the least, make some provision (e.g. curtained spaces) where staff need not be in a state of undress in the presence of others. Remember that this may be important to other staff too. For instance, a member of staff with a stoma bag would not wish to be disrobed in the presence of other people.

If it is genuinely impossible to adapt locker or shower facilities in order to accommodate a pre-operative member of staff in a state of undress then this is one very limited example of an instance where the law permits an employer to make separate arrangements. It is highly unlikely that the employee concerned would object to this pre-operatively.

However, it is not good practice to require a trans person to use disabled toilet facilities (unless they have a disability requiring this), neither is it permissible to expect disabled staff to accept such arrangements. Any special arrangements must be time limited.

Above all, following gender reassignment surgery or legal recognition, transsexual people must be supported to use all facilities designated for other members of their acquired gender."
Toilets and locker rooms

Gendered facilities - which ones to use and when

The use of toilets and other gendered facilities can occasionally be an issue in the workplace, particularly during the early stages of transition if colleagues were familiar with the employee in their former role.

It is the commonest concern to be raised. However it is not difficult to address.

The usual point for starting to use opposite gender facilities will be the day the employee starts coming to work in the new role.

Practical tips for dealing with concerns

Provided any anxieties are approached intelligently the usual experience is that concerns can soon be overcome – at worst by agreeing, as a temporary compromise measure, to reserve one set of facilities for colleagues who may have strong objections to sharing facilities used by the transsexual employee.

Where locker or shower facilities are open plan then it is good practice to review this and, at the least, make some provision (e.g. curtained spaces) where staff need not be in a state of undress in the presence of others. Remember that this may be important to other staff too. For instance, a member of staff with a stoma bag would not wish to be disrobed in the presence of other people.

If it is genuinely impossible to adapt locker or shower facilities in order to accommodate a pre-operative member of staff in a state of undress then this is one very limited example of an instance where the law permits an employer to make separate arrangements. It is highly unlikely that the employee concerned would object to this pre-operatively.

However, it is not good practice to require a trans person to use disabled toilet facilities (unless they have a disability requiring this), neither is it permissible to expect disabled staff to accept such arrangements.

Any special arrangements must be time limited.

Above all, following gender reassignment surgery or legal recognition, transsexual people must be supported to use all facilities designated for other members of their acquired gender.

Other points to consider

You should bear in mind that successful routine use of the appropriately gendered facilities is a part of what clinicians involved in supervising an employee’s gender reassignment are expecting to see. This is considered a mark of the individual’s social acceptance.

It is also important to appreciate that if anyone is likely to feel vulnerable in the toilet then it will most likely be the transsexual person – being acutely aware of the incongruity in their anatomy and certainly not wishing to draw any attention to this. The individual is aiming to move away from their former gender role; they are therefore not going to behave in any way that reminds them or anyone else of that background.

Finally it is never acceptable to require someone undergoing gender reassignment to use toilets or other facilities designated for members of their birth gender. This can raise issues for employee safety as well as dignity. This risk was amply illustrated at a public event in London where stewards had been instructed to direct trans women to use the men’s rather than women’s toilets provided.

During the event a trans woman was sexually assaulted in the men’s toilet as a direct result of the policy. If this were to happen on an employer’s premises then there would be grounds for prosecution for harassment and on health and safety grounds.

Kirklees Law Centre wins landmark transgender discrimination case
Friday, March 21st 2014
A transgender woman from Halifax today won her claim of transgender discrimination in the provision of goods and services against a pub which had refused to allow her to use the ladies lavatories and had barred her when she complained. This is the first time that a case of transgender discrimination in the provision of goods and services has been heard in a British court. It highlights the need for businesses and other service providers to treat all of their customers fairly and equally, and demonstrates that there is legal protection for victims of discrimination.

Susan Brook, has lived as a woman for over 20 years and has undergone gender reassignment surgery.

On 27th July 2012 she attended the New Inn on Heath Hill Road, Mount Tabor, Halifax. She went to the ladies toilets but was followed in by another lady who told her that she should not use the ladies toilets. She spoke to the landlord of the pub and explained what had happened, but he refused to assist. He later barred her from the pub and confirmed that she should not use the ladies toilets and must use the gentleman’s toilets.

On Friday, 7th March 2014, the matter was heard before Judge Miller at Halifax County Court. He found that Susan had been discriminated against and had subsequently been victimised by the pub management. He issued a declaration of discrimination and awarded damages of £1,500.

Susan, who has suffered many instances of discrimination because of her transgender status, was delighted by the decision. She said: “This was not the first or the most serious incident I have experienced, but I had just had enough. This is the first time a court has taken action against transgender discrimination and it sends out a strong message that this must stop. I hope it helps to reduce discrimination not only for me but for all the other transgender people out there.”

“The discrimination I faced, and this was just one example, made me lose confidence and self-esteem and for the last year I have felt unable to go out to pubs in my local area which has severely affected my social life. Hopefully, highlighting cases such as this will help people to realise how destructive discrimination is and start to change attitudes in society.”

The case was brought by Kirklees Law Centre, helped in part by funding from the Legal Aid Agency.

The Law Centre’s Chief Executive, Nick Whittingham, said: “This is another positive step in the development of equalities law and practice. Genuinely reducing discrimination requires a change in social attitudes which will only come gradually, but it has been shown time and time again that the law is a powerful tool for social change and cases such as this really do.

Here is an older case of a Transsexual Woman transitioning at work and wanting to use the Female facilities I think today, the court would be more likely to define the period of changeover and adjustment to allow full use of the appropriate Gender Facilities as 3-6 months !!

CROFT (A) v ROYAL MAIL (R) Female Transsexual employee refused the use of female lavatories for the time being, but provided with use of unisex disabled toilet.

Barrister Paul Rose QC
Practice area(s) Employment and discrimination
Court Court of Appeal Judges Pill, Jonathan Parker & Keene LLJ
Citation [2003] IRLR 592  Date 11-Jun-2003

Summary Facts: Transsexual employee refused the use of female lavatories for the time being, but provided with use of unisex disabled toilet. CA upheld decisions of ET and EAT that R did not discriminate against A on grounds of sex.
The right for a transsexual to use female toilet facilities is not automatic but is acquired, after a period of adjustment. R acted reasonably in the circumstances. A began employment with post office in 1987 as a man. In January 1998 A was diagnosed with gender dysphoria and underwent hormone treatment to become feminised.

In August 1998, after a week off work, A came to work as a female. The main issue for A was being able to use the female toilet close to where she worked. However, there had been objections from female employees to sharing the changing facilities with someone they had known to be a man and R proposed using the unisex disabled toilet.

A initially accepted this arrangement, but was unhappy with this in the long-term because it was an obstacle to her gaining acceptance as a female, she was not disabled and the toilet was located some distance away in a very public area.

A also reported some incidences of harassment from staff. R reissued its harassment policy in response to this and spoke to the individuals concerned. A never made a formal complaint under the harassment procedure.

R sought medical advice concerning A’s position. R’s doctor, on ascertaining A’s medical position from her GP, advised that it would be appropriate to continue to use the disabled toilet, but once she had undergone gender reassignment surgery, it would then be appropriate to use the female toilets. R was prepared for this to be sooner, once a period of consultation with the workforce had taken place.

A threatened to use the female toilets anyway. R responded that this would be considered to be insubordination and A could be suspended if she did so.

A demanded a firm date for use of the female toilets, to be by the end of June 1999, but R found this impossible to give, particularly as A had been off sick since January, only returning in May. A tendered her resignation, stating that she considered herself to be constructively dismissed.

The Claim & Statutory Background
A claimed constructive unfair dismissal and direct sex discrimination. The Employment Tribunal unanimously dismissed both claims and A’s appeal to the EAT was dismissed by Mr Justice Lindsay.

S.6(2) of the Sex Discrimination Act 1975 (“SDA”) provides, amongst other things, that it is unlawful for a person to discriminate against a woman in the way it affords her access to facilities, by dismissing her, or subjecting her to any other detriment. It was common ground that toilet facilities are “facilities” within the meaning of the section.

S.2A of the SDA provides that a person discriminates against another if he treats them less favourably than he would treat others on the ground that they intend to undergo, are undergoing or have undergone gender reassignment. S.82 of the SDA defines “gender reassignment” as ‘a process which is undertaken under medical supervision for the purpose of reassigning a person’s sex by changing physiological or other characteristics of sex, and includes any part of such a process.’

Held: The Court held that the SDA, by S.2A, provides for a category of persons who are not to be discriminated against. By S.82, the category of persons includes those at all stages of gender reassignment under medical supervision, but it does not follow that all such persons are entitled immediately to be treated as members of the sex to which they aspire.
Nor does it follow that that, until the final stage is reached, they can necessarily be re-
quired, in relation to lavatories, to behave as if they were not undergoing gender reas-
signment.

The Court found 3 basic points:
(i) At the material time A was a transsexual;
(ii) She had reached the stage of gender reassignment where she had begun, but not
long begun, to present as a woman attempting a “real life test”;
(iii) A was in good faith in wishing to become female.

The Court then determined whether A’s treatment amounted to less favourable treat-
ment on the ground she was undergoing gender reassignment. It was held that trans-
sexuals must not be discriminated against as such. This means not only that they
must be provided with toilet facilities no less commodious than other toilets, but also
that it must be considered whether a transsexual should be granted the choice she
seeks.

Applying Bellinger v Bellinger [2003] 2 WLR 1174 (HL), para 41 and Goodwin v UK
[2002] 35 EHRR 18, para 90, ‘a permanent refusal to refuse that choice to someone
presenting to the world as a woman could be an act of discrimination even if the per-
son had not undergone the final surgical intervention.’

However, the Court did not accept that a formerly male employee can, by presenting
as female, necessarily and immediately assert the right to use female toilets.
‘The status of trans sexual 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 described in
Bellinger.

A court should have regard to the particular difficulties which arise with respect to toi-
let facilities, the obligation and the need for separate facilities for men and women,
and the fact that acquiring the status of a transsexual does not carry with it the right to
choose which toilets to use.

Presentation as a female did not necessarily make A a female entitled to use female
toilet facilities. She was not discriminated “on the ground” that she was undergoing
gender reassignment. The toilet facilities were adequate; it was the label given to them
that was claimed to be unacceptable.

In the Court’s judgment, it was ‘inherent in a situation in which two sets of facilities ,
male and female, are required and in which a category of persons changing from one
sex to the other is recognised, that there must be a period during which the employer
is entitled to make separate arrangement s for those undergoing the change.’

Following P v S and Cornwall County Council [1996] Case C-13/94 ICR 795,
para 22 and Goodwin, para 91, an employer must respect the dignity, freedom and
worth of the employee. However, considering the stage reached by A in embarking on
the “real life test”, the Court found nothing unlawful in requiring the use of separate
facilities. The moment a person in A’s position is entitled to use female toilets de-
pends 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 treat-
ment, including the employee’s own assessment and presentation. The employer is
also entitled to take into account the susceptibilities of other members of the work-
force.

The claim by A was that she was treated less favourably than the female workforce.
This question could not be answered without first determining whether A was entitled
to be treated as a female.

The Court found that, applying that test to the facts found by the ET, R was not guilty
of direct discrimination against A.

The measures taken by R were appropriate in the circumstances.
They were entitled, for a period of time, to rely on the unisex disabled toilet as being a sufficient facility. They maintained a flexible approach and it was not unreasonable to decline to give a firm date at that time.

A had been off work from January to May 1999 and the “real life test” clearly contemplates a substantial period of time living as the chosen gender.

**Liability for Harassment & S.41**
The ET found that there were acts of discrimination by employees, but that R had a statutory defence under s.41(3) of the SDA, in that they took such steps as were reasonably practicable to prevent such acts.

Applying *Canniffe v East Riding of Yorkshire Council* [2000] IRLR 555, the Court found that the ET had made the correct assessment under this section and that the consideration of the likely effect or lack of effect, of any action which it is submitted that R should have taken is not the sole criterion. In considering whether an action is reasonably practicable it is permissible to take into account the extent of difference, if any, the action is likely to make.

R is entitled to consider whether the time, effort and expense of the suggested measures are disproportionate to the result likely to be achieved.

From the above findings, the Court considered that there was no conduct by R which could amount to constructive dismissal.

The Appeal was dismissed. Paul Rose QC represented the Respondent.