

# Legal protection and good practice for gender variant, transsexual and transgender people in the workplace

## Guidelines for employers

### Gender Identity Research and Education Society

#### CODE of CONDUCT

Our organisation is proud of its employment policy and its commitment to equality and diversity among its employees. We support all our staff, we treat them with respect and have due regard for their privacy and wellbeing, regardless of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.<sup>1</sup>

We have a zero tolerance policy towards discriminatory language or actions that could create a hostile environment. We do not accept behaviour that amounts to harassment or exclusion of any individual.

We monitor and record data in relation to staff attitudes towards people who have protected characteristics.

## Contents

### Introduction

1. Benefits to the Employer	3
2. Summary of Law and good practice	4
3. Memorandum of Understanding	7
4. Issues to be discussed in preparing the Memorandum	8
5. Occupational Health/Welfare	10
6. Celebrating diversity - the 'trans' champion	11
7. Informing colleagues	11
8. Dress and appearance code	14
9. Use of single sex facilities	14
10. Health and Safety	14
11. Dealing with the media	15
12. Privacy of personal records	15
13. Insurance matters	16
14. Pensions and retirement	16
15. Other gender variant and transgender people	17
16. Monitoring	17
17. Further information, advice and training	18
18. Useful links	19
19. Terminology: unless readers are familiar with the terms used, it may be advisable to read the glossary before reading the rest of the document: the terms included are: gender identity; sex; gender role; gender variance/ gender dysphoria/gender identity disorder; transsexualism; trans men; trans women; gender confirmation treatment; transgender, transition, affirmed gender; sexual orientation, Gender Recognition Act.	20

# The Law and Good practice in relation to gender variant, transsexual and transgender employees

## Introduction

This document explains the law and good practice in regard to gender variant, transsexual and transgender employees (see glossary of terms), and the issues that an employer has to address when employees propose to change their gender role on a permanent basis. Employers should expect about 1% of the workforce to experience and/or express their gender in ways that do not conform to the typical binary man/woman model. Many of these will not disclose their feelings, and may choose not to express them in the workplace because they fear a transphobic reaction from their employers and co-workers. Nonetheless, 25 per 100,000 in the general population have already sought medical treatment and this number appears to be doubling every six years.<sup>1</sup>

## 1. Benefits to the Employer

Most employers are aware of the need to show a positive approach to transgender people and other groups with 'protected characteristics'. An accepting environment in which diversity is celebrated, ensures that valuable staff are recruited and retained. Yet, at present 40% of the people who would like to transition feel unable to do so in the work environment<sup>2</sup>, and are, therefore, working under great stress and are unlikely to reach their potential.

Providing a welcoming environment in which valuable staff are recruited and retained benefits everybody, not just the groups specifically targeted. Where a protected characteristic is under-represented, it is possible for employers to take positive action to encourage members of this group to apply for jobs by advertising in an inclusive way. When candidates are being considered for a job, or for promotion, a person with a protected characteristic may now be selected in preference to others, provided that he or she is as well qualified other candidates. However, automatic preference of a protected applicant is not permitted.

---

<sup>1</sup> GIRES (2009) Gender variance in the UK: Prevalence, incidence, growth, and geographic distribution; <http://www.gires.org.uk/assets/Medpro-Assets/GenderVarianceUK-report.pdf>

<sup>2</sup> Whittle, S, Turner, L, Al-Alami, M (2007) Engendered penalties: transgender and transsexual people's experiences of inequality and discrimination. Available at [www.pfc.org.uk/files/EngenderedPenalties.pdf](http://www.pfc.org.uk/files/EngenderedPenalties.pdf)

## 2. Summary of the Law and Good Practice



The Equality Act 2010 (the Act) strengthens and unifies the existing laws that protect gender variant, transgender and transsexual people. The law in this area may continue to evolve, so it is important that public and private employers ensure continuity of support for those with the protected characteristic of gender reassignment, by ensuring that good practice is embedded in their equality and diversity policies. Equality analyses must be carried out on policies and protocols to ensure compliance with the Act.

Public sector employers, and those organisations that provide public services, have a general duty to

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Private Sector Employers have similar duties. In all environments, it is good practice to have due regard for the needs of people who may be disadvantaged by reason of a protected characteristic.

Transsexual people, that is, 'those proposing to undergo, undergoing or having undergone' gender reassignment - a process known as 'transition' - are specifically protected against discrimination - whether direct or indirect - and also harassment and victimisation in the workplace.

Direct discrimination occurs when a person is treated less well as a consequence of having a protected characteristic:

When Mary first disclosed to her employer that she was about to undergo gender reassignment, she had an immediate pay cut.

Indirect discrimination occurs when a rule that is neutral in its application to the majority, has a disproportionately negative effect on a person with a protected characteristic. New and old policies and procedures should be considered in light of the needs of trans people, and should be designing or amended to cater for their particular circumstances.

Before Simon transitioned, he had been awarded a certificate for being ‘employee of the year’. Simon’s award was under the name Sarah. He requests that the certificate is re-printed with his new name on it. The company argues that this is a matter of historic record and these certificates, which are on continuous display, are never altered. The ‘legitimate aim’ in this company’s policy, is to preserve an accurate record. However, this ‘outs’ Simon and breaches his right to privacy and dignity; it is therefore ‘disproportionate’.

Harassment means any unwanted behaviour that violates a person’s dignity or creates a hostile environment.

Brian heard colleagues in his office making jokes about trans people. The jokes were not directed at him, because he was not ‘out’ at work, as he had transitioned before joining the company. However, it made him feel that if he did disclose his trans history, he would suffer harassment from these colleagues.

Victimisation occurs when someone is treated badly as a direct result of having complained about discriminatory treatment under the Equality Act.

Susan had recently transitioned to live as a woman. In the canteen, she was refused service and a derogatory remark was made about her appearance. She complained to the manager of the canteen who told her, very abruptly, that she could go to a local café for her lunch.

Trans people are protected as service users in the delivery of goods, facilities, and services. The 2010 Act broadens the scope of ‘gender reassignment’ protection, to cover individuals whether or not they are under medical supervision, and to protect those who are associated with transsexual people, such as partners, spouses, other family members or carers, and also those perceived to be transsexual, who may be variously described as gender variant, ‘trans’ or ‘transgender’ people, (see ‘Terminology’).

Equality law also applies to those employed, in educational institutions: in further and higher education and in schools. However, in the latter case protection against harassment is disapplied with regard to learners, although any incidents that would otherwise be regarded as harassment because of gender reassignment, would amount to a ‘detriment’, and are, therefore, covered under discrimination law. It is particularly important in schools to teach positive attitudes and ensure that teachers and pupils, who transition their gender roles, are treated with respect (schools may

like to refer to the GIRES/Home Office document on Transphobic Bullying<sup>3</sup> which contains material that may be helpful to all employers).



Good practice in both public and private workplaces, should ensure that the spirit, as well as the letter of the law is embedded in all practices and policies so that transgender people generally are confident of their welcome in the workplace. Employers and co-workers must be aware of their obligation:

- not to discriminate against transgender people;
- not to harass transgender people or create a hostile environment by using transphobic language (whether or not this is in the presence of a transgender person);
- not to victimise a transgender person who has complained about a transphobic incident;
- not to penalise a transgender person who takes time off for treatment associated with gender reassignment;
- to maintain the privacy and dignity of transgender people;
- to ensure that measures are in place to protect and assist a person who is undergoing transition.

The **Gender Recognition Act, 2004**, enables those who have transitioned permanently to acquire a gender recognition certificate (GRC), confirming their new gender status 'for all purposes'; the birth certificate is automatically renewed for those whose birth was originally registered in the UK. In these circumstances there are heightened privacy requirements for documentation or information that reveals a previous gender status. Those who have learned of the gender reassignment status in their 'official capacity' would commit a criminal act, if they divulged this information without the express permission of the individual concerned. Pre-existing marriages or civil partnerships must be annulled before a GRC is awarded.

The lack of a GRC must not be used to disadvantage a trans person. Asking to see a GRC is nearly always inappropriate; it may be regarded as harassment, and negates one of its central purposes, that is, to provide privacy. Nor should a birth certificate be required. Identification can usually be provided by Passports or driving licences.

---

<sup>3</sup> <http://www.gires.org.uk/transbullying.php>

A GRC is not needed in order to change one's name, pronouns, or gender of presentation at work. Trans people will typically have lived in their affirmed gender for at least 2 years before being granted their GRC. Transitioning and continuing to work is, for many transsexual people, a requirement if genital surgery is sought.

**The Human Rights Act 1998** is implicit in all the above legislation. The Act requires transgender people to be treated with respect, dignity and fairness, and with regard for their need for privacy.

**Equality and Diversity policies and practices should be well-publicised throughout organisations, and they should be explicit in procurement policies, so that those bidding for contracts for supplying services to, or on behalf of public bodies, are aware of the expectation that all relevant strands of diversity will be protected. It is important that 'gender reassignment' (or alternative terminology if preferred) is mentioned specifically in policy documents.**

### 3. Memorandum of Understanding

Employers often act to address gender identity issues in their workforce, only when the occasion actually arises. They are ill-prepared and are, therefore, likely to act inappropriately, causing discomfort to the trans person concerned. Fear of an inappropriate response may prevent people from transitioning which will, in turn, mean that their performance will be less than optimal.

One of the most important factors in facilitating the successful transition of an employee who is undergoing a change of gender role, is to discuss thoroughly with the individual how to handle it. Both the individual and the manager will need to agree the actions proposed to ensure there is mutual understanding about what needs to take place. Nothing should be done without the consent of the individual.

If this is a new area for an employer it is helpful to develop an understanding that this is part of a potentially life saving medical treatment and is not undertaken lightly by the person experiencing it. Nor are medical decisions about treatment taken without careful prior assessment (See GIRES leaflet [gender-dysphoria.pdf](#)). Above all it is not a choice. By the time of transition, the individual's profound and persistent gender discomfort has become intolerable and living in a gender role that accords with the innate gender identity has become an urgent necessity.

The employer, therefore, needs to make it clear that in the event of an employee transitioning, measures are in place to facilitate this. It is suggested that an agreed 'Memorandum of Understanding' be drawn up in each case, covering a number of possible topics, outlined below. The transsexual member of staff and the line manager (or other senior member of staff) should sign this document. The agreement does not represent a binding and unchangeable arrangement, but rather a commitment by the employer to engage with, and support, the employee at all stages.

Whilst the initial meetings and the drafting of the document can be undertaken by the staff member's line manager or support manager, a member of the Human Resources Department is encouraged to take an active role in the negotiations and to meet with the transsexual member of staff to discuss the detail of the Memorandum before it is signed. This must be done with the agreement of the transsexual person. It is important that this confidential information is not spread around the office or workforce in an uncontrolled and unenlightened way.

The transsexual member of staff may wish to have the assistance and support of a colleague during this process.

The implementation of the Memorandum should be reviewed at least every three months, but should also be reassessed at each significant stage of the process, and at any time upon request by the employee.

**The Memorandum is a confidential document.** There needs to be agreement on where copies should be kept and who should have access. The envelope containing it should have the name(s) of the person(s) who are permitted access clearly marked.

#### 4. Issues to be discussed in preparing the Memorandum

Issues, which may be considered by the individual and the manager, include:

- whether the individual wishes to stay in the current post during or after gender reassignment or, if possible, would prefer to be redeployed;
- whether there are duties within the role that should not be undertaken at specific times within the process (for instance heavy physical work)<sup>4</sup>;
- what risks may arise for the individual in the workplace as a result of the transition, for instance in relationships with external parties or arising from media intrusion,<sup>5</sup> and how they will be dealt with;
- the expected point or phase of change of name, personal details and social gender; name change may occur without any legal process but, before

---

<sup>4</sup> Note: A few occupations may involve an Occupational Requirement (the work to be performed only by a person of one specific gender). An agreed re-deployment, possibly as a temporary measure, may be advised. Transsexual people should not be dismissed on these grounds, and may be recruited where other staff are available to fulfil the particular task where an OR applies. Those with GRCs *must* be regarded as being of the post-transition gender status for the purposes of ORs, but others *may* be just as suitable who do not have GRCs. Common sense should prevail. For further information go to Trans service users' rights [www.gires.org.uk/assets/trans-rights.pdf](http://www.gires.org.uk/assets/trans-rights.pdf) (page17)

<sup>5</sup> See Press Release: a generic statement of commitment to a diverse workforce, section 11.

documentation is changed, it is usual for a Statutory Declaration (made before a solicitor or in a Magistrates' Court)<sup>6</sup> or a Deed Poll document to be obtained, and possibly a doctor's letter. These documents serve only to provide evidence of a person's intention to retain the new name on a permanent basis;

- whether the individual wishes to inform management, colleagues and associates or would prefer this to be done by someone else who is agreed to be suitable;
- when the disclosure is to take place and the depth of the disclosure, so that appropriate support can be provided for the individual and for other staff;
- whether training or briefing of colleagues will be necessary and at what point and by whom this will be carried out; advice in this regard should be taken from the Human Resources Department or the employer's 'trans' or LGBT champion;
- what amendments will be required to records and systems and the safeguards of their security;
- what the implications are for pensions and insurance;
- whether a transsexual individual is adequately covered by existing policy on issues such as confidentiality, harassment<sup>7</sup> and insurance and if not how these will be amended;
- agreeing any dress code or uniform requirements;
- agreeing the point at which the individual will commence using single sex facilities in the new gender role, for example toilets and changing areas. This should occur from the time that people transition their role at work; it is not appropriate to insist on a person who has transitioned permanently, to continue using accessible toilets designated for disabled people, unless this is elected by the trans person;
- liaison with any clients or external agencies in respect of any outstanding matters in which the transsexual individual is currently involved;
- where CRB checks are required, following a change of name, a special procedure may be accessed;<sup>8</sup>

---

<sup>6</sup> The cost of this varies significantly. It is good practice for the employer to cover this cost.

<sup>7</sup> Discussion and examples of workplace harassment of gender variant people may be found on the GIRES website.  
<http://www.gires.org.uk/wdiscrimination.php>

- the expected timescale of the medical and surgical procedures and the time off required for medical treatment, including what effect this will have on the employee's pay and promotion; N.b. time off for treatments associated with gender reassignment are specifically protected under the Equality Act 2010.

This can only be a general guide initially. Timescales may change over time, and be unpredictable if treatment is in the NHS. It is not necessary for people to have time off work in connection with hormone therapy. Some surgical interventions, for instance, chest reconstruction for trans men, may happen early in the transition process, but genital surgeries, which may or may not be undertaken, will usually not be scheduled until the end of the first year of treatment in any event.

It is good practice to discuss as far as possible in advance the time away from work that an individual will need in undergoing gender reassignment treatment. Consultations and hospital appointments may require full days away from work in addition to any time required for surgical procedures. Flexibility should be allowed for individuals to undergo treatment. It is important to remember that it may constitute unlawful discrimination if an individual is treated less favourably when undergoing gender reassignment treatment than others who are absent from work for other medical reasons.

Considered and well-documented negotiations should be able to identify and deal with potential areas of conflict before they arise. Nothing should be done without the consent/knowledge of the individual.

## 5. The Role of Occupational Health/Welfare

The role of Occupational Health (OH) will be to advise the employer on fitness for work and fitness for role issues as well as provide appropriate advice on medical issues, which may impact on an individual's ability to carry out the full scope of the job. Advice on absence relating to treatment for transgender purposes should also be sought (in line with current policy for attendance management). A person experiencing gender dysphoria should be offered the opportunity to be referred to Occupational Health for advice.

Occupational Health cannot seek to replace the specialist medical advice, assessment and support required by individuals who are considering gender reassignment.

---

<sup>8</sup> CRBSensitive@crb.gsi.gov.uk and <http://www.equalityhumanrights.com/advice-and-guidance/information-for-employers/guidance-on-recruiting-and-supporting-trans-people/roles-that-require-police-checks/the-crb-solution/>

However OH staff are able to offer confidential support and counselling for those who are suffering emotionally at what can be a distressing and confusing period of their lives.

Post surgery, advice may also be needed regarding any temporary adjustments which may be required to assist those returning to work, who may not initially be able to undertake all aspects of their former substantive role.

Any individual referred to Occupational Health can expect the issues to be dealt with in the strictest of confidence, as would be expected from any other practitioners providing care.

## 6. Celebrating Diversity

As part of the policy to create an inclusive workforce, a senior manager should be dedicated to equality and diversity issues, and have oversight of training of the workforce. This can be done by involving the third sector, professional trainers, local trans groups, and e-learning modules. A trans or LGB&T champion may be appointed. This may be a person who has other HR or OH responsibilities. The person undertaking this role should be well publicised within the organisation, so that any person planning to transition, or experiencing transphobic behaviour has a starting point for obtaining advice and support. Events that celebrate diversity, such as LGB&T history month (February) should be funded by the employer and attended by senior management.

## 7. Informing colleagues

Following discussions between the manager and the individual, it should be established whether the transsexual individual wishes to inform colleagues about transsexualism and the proposed transition. Many transsexual people wish to keep their transsexual status private, whilst others are willing to discuss it confidentially or openly. There is no need or obligation for an individual to disclose his or her transgender status as a condition of employment nor is there any obligation on the employer to inform colleagues and the public that a member of staff is intending to undergo, is undergoing or has undergone gender reassignment. Such information is necessary only where the relationship, with a person who knew the individual prior to his or her change of status, is to continue. So, unless the individual requests otherwise, the details should only be shared with such a person.

It is usually good practice for the employer to take responsibility for informing those who need to know, though the known wishes of the individual concerned are of paramount importance in this regard. In some circumstances the transgender person may wish to disclose these matters personally to some or all of his or her contacts. If

this is the case the employer will need to know when the disclosure is to take place and how much information will be disclosed in order to provide appropriate support to the members of staff involved.

Levels of disclosure may vary depending on the size of the company and the extent to which the individual proposing to change gender role has face to face contact with co-workers.

The following example involves a trans woman, but exactly the same approach could be used for a trans man, with the pronouns and names reversed:

Level one: a trans woman has a private interview with the CEO, senior manager or line manager;

Level two: the CEO (or other manager) calls a meeting of those colleagues who work closely with the trans person, and explains the situation and provides basic information; the trans woman joins the group for lunch and makes it clear that she is happy to talk about it and welcomes any questions;

Level three: an e-mail written by the trans person is sent out to all other employees in the same building, perhaps along the following lines.

E-mail to colleagues:

Dear Colleagues,

I am writing to you because I know that it wouldn't be possible to speak to you all individually. I wanted to tell you my news personally, rather than leaving you to hear it via someone else. There are going to be some big changes in my life that I would like to share with you.

I have been seeing a specialist doctor for a while, who confirms what I have recognised for many years. I identify as a woman, and I always have. Because I don't look like a woman, I have lived with a feeling of great discomfort, which I have tried to ignore, repress or overcome. This uncomfortable experience is called gender dysphoria. Most of you will have heard of people in my situation being described as transgender, or just trans.

I have reached the point where I cannot continue in my old gender role. I shall be away for three weeks and will return in September. From then on I will be living and working as a woman. I am still the same person, and I shall continue to do the same job. In that respect nothing will change. My appearance and the way I dress will change, of course, and I will no longer be known as Michael but as Susan. Pronouns are tricky, but I am sure I can count on you all to refer to me as 'she'.

We have great values in our organisation; we celebrate diversity and we treat each other as equals, so I am confident that all of you will give me the support that I need through this rather difficult phase of my life.

Please feel free to come and ask me about anything that you don't understand, or would like to know. I don't mind answering questions, and if you have uncertainties, I would much rather you spoke to me directly about them.

Regards  
M/Susan

## 8. Dress and appearance code

It is good practice to allow enough flexibility in the dress code to accommodate the process of transition from one gender role to another. For example, in the transition from male to female, flexibility should be allowed over hair length and style, jewellery and make up. If the individual is working with the public, a temporary redeployment out of the public gaze, with the agreement of the individual concerned, may be appropriate. Where necessary, a new uniform should be fitted and ready well in advance of the change of gender role.

## 9. Use of single-sex facilities

Good practice indicates that facilities such as toilets and changing rooms should be accessed according to the full-time presentation of the employee in the new gender role. Since this is an area which causes great consternation for employers and other employees, it may be helpful to think of this in terms of another protected characteristics, say, 'race'. If, for instance, an Asian woman complained that she did not wish to share toilet facilities with a black woman (or any other combination of racial characteristics), the employer would not order the latter to use the toilets designated for disabled people. The same principle may be applied to trans women. However, in strictly legal terms, the case of *Croft v. Royal Mail Group PLC 2003*, the Court of Appeal held that such discrimination was permissible for a limited, unspecified period.

Trans people may not wish to be regarded as disabled. To avoid any such difficulties, employers may consider providing more gender-neutral facilities, and/or changing the labelling on some facilities so that they are gender neutral. Greater privacy may be provided by having more cubicles, and by having partitions that extend from floor to ceiling, and doors that extend to the floor.

In addition, other users of the facilities should have awareness training, and be properly prepared to welcome any trans person who is starting to use the appropriate facilities.

A person who has acquired a Gender Recognition Certificate must be treated for all purposes as having the new gender status and may always use the toilets appropriate to his or her legal gender status.

## 10. Health and Safety

Employers should ensure that ongoing Risk Assessments are carried out for transsexual employees. This will ensure that the individual is kitted out with correct clothing, footwear, headgear and equipment and also that, for instance, post operatively, the work is not too strenuous. Trans women may lose upper body strength when having hormone treatment.

## 11. Dealing with the media

Given the sensitivity of gender reassignment, there is always the possibility of intrusion from the media. However, with recent changes in the law and wider public understanding of the subject, this has tended to be less common. The employer should prepare a media strategy, indicating how to respond to enquiries regarding a transsexual employee. In the interests of confidentiality the name and specific post of the individual should not be revealed. If the identity of the individual becomes known to the media, the individual's

Our organisation is proud of its employment policy and its commitment to equality and diversity among its employees. We support all our staff, we treat them with respect and have due regard for their privacy and wellbeing, regardless of age, disability, gender reassignment, marital/or civil partnership status, pregnancy/maternity, race/ethnicity, religion or belief, sex or sexual orientation.

*Press release*

risk assessment should be reviewed immediately. It may be necessary to protect the individual with additional control measures such as redeployment away from contact with members of the public. It may also be necessary to help the individual move from the present address if besieged by the media or otherwise harassed at home. The wishes of the individual must be considered in any response given to the media.

## 12. Privacy of personal records and references

The utmost discretion is needed when dealing with telephone calls. Staff working in offices where members of the public may make incoming calls, should be specially trained to understand the need for privacy and the importance of using correct pronouns



The respective forms used for security checks and medical screening will seek information that will lead to identification of transsexual status. This information will remain 'confidential' and the disclosure of this information will be restricted to those personnel involved in these two procedures, who will be required to honour that confidentiality. Any subsequent paperwork that indicates the individual's transsexual status will not be accessible to other personnel. Where it is reasonable and practical, it is good practice for employers to update their records to ensure that any references reflect current name, title and gender. In some cases it may be necessary to retain records relating to an individual's identity at birth, e.g. for pension or insurance purposes. Access to any records showing the change of name and other details associated with the individual's transsexual status such as records of absence for medical treatment should be restricted to staff who require such information to perform their specific duties. These documents should be stored

securely in a sealed envelope, marked strictly confidential, separately from the files of other employees, rather than in a filing cabinet. The name(s) of those permitted access should be clearly indicated on the envelope.

Transsexual people in employment may choose voluntarily to disclose at a secondary level, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed. **Breaches of confidentiality will be treated in the same serious manner as disclosure of personal details of any other employee. Where an employee holds a GRC, this information is 'sensitive'. Those who obtain such information as part of their job - therefore, in an 'official capacity' - could be committing a criminal offence if they shared this information with anyone else, unless this is authorised by the trans individual concerned.**

### 13. Insurance Matters

Employers registering staff for corporate insurance and benefits policies are advised to inform their underwriters if they know of a trans employee's status, since some insurers automatically invalidate a policy if a major fact such as gender reassignment is not disclosed. The employer should inform the employee before disclosing the information. If an employer is unaware that an employee has a reassigned gender, the obligation to disclose falls upon the employee, who could also be held liable in the event of an accident for which no valid insurance cover exists.

### 14. Pensions and Retirement

Everyone born after April 1955 now receives state pension at 65. But women born before 1950 can claim state pension at 60, and those born between 1950 and 1955 can claim it at a point between 60 and 65. For state pension purposes, transsexual people can only be regarded as the sex recorded at birth until they have obtained a new birth certificate under the provisions of the Gender Recognition Act 2004. Otherwise, those born prior to April 1955 can only claim state pension at the age appropriate to the sex on the original birth certificate - that is for transsexual women at age 65 and for transsexual men at 60.<sup>9</sup> It is the responsibility of the employer to take suitable steps to keep confidential the reason for the individual's apparently early or late retirement.

---

<sup>9</sup> Under recent case law, a transsexual woman is entitled to receive a state pension from the age of 60 without a Gender Recognition Certificate if she reached that age before 4 April 2005 when the Gender Recognition Act came into force.

## 15. Other gender variant and transgender people

The above guidelines deal with employers' duties to people who are proposing to undergo transition at work, are undergoing transition or have previously transitioned, rather than those who change their gender role on a part-time basis. However, as mentioned in section 1, in certain circumstances, those believed to be, or perceived as, undergoing gender reassignment, may be protected from harassment and discrimination. In any case, it is good practice to provide equal treatment to all transgender people, whether or not they intend to undergo full-time, permanent transition to a new gender role. For those whose identification is completely neutral, a non-gendered role is likely to be adopted on a permanent basis. It is possible to accommodate a person who presents sometimes in one role, and sometimes in another, but this may depend upon their job, and must still meet the dress code with which all other employees must comply.

## 16. Monitoring

Monitoring of trans people in terms of counting how many there are in your organisation, is a sensitive issue and not necessarily helpful for a number of reasons:

- trans people fear that the process may 'out' them:
  - trans people who have not yet started on the transition journey may not wish others to know of their gender concerns;
- Asking the question in a respectful and relevant way is difficult;
  - there are many different self-descriptions that fall outside the usual binary tick-boxes;
  - 'trans' is not an identity, but a transient state and those who pass through it, then identify as ordinary men and women.

Recommendations:

Use a questionnaire asking about all the protected characteristics rather than just gender reassignment

Explain carefully the reasons for collecting data, and what will be done with the information once collected.

Give an absolute assurance of confidentiality and demonstrate how that is to be achieved.

Before attempting to count how many transgender people there are in the organisation, make sure that proper preparations have been undertaken by training the workforce, and by monitoring *attitudes*.

Be prepared to provide the necessary training if the responses indicate that the workplace may not be sufficiently trans-friendly.

This may be done by asking questions such as: How comfortable would you be working with, or providing services for a transgender person?

- (1) very comfortable;
- (2) comfortable;
- (3) neutral
- (4) uncomfortable;
- (5) very uncomfortable;
- (6) refuse to work with/provide services for

A slightly differently nuanced question might be: How confident would you be....?

Only when the workplace is demonstrated to be trans friendly should direct monitoring of the numbers of trans people employed be attempted.

The question is difficult to frame: 'male, female, transgender' is not acceptable  
There are a few alternative suggestions from different groups:

*Is your gender identity inconsistent with (different from) the sex you were assigned at birth?*

This is a catch-all question because it applies to those who have not, and who may never, transition, as well as those who are transitioning or have done so.

*Are you living now in a gender role that is different from the one assigned at birth?*

This question would only catch those who had transitioned their gender role already.

Asking people to self-identify can lead to many different answers. A recent survey identified over 30 such identifications. This approach may be useful in determining how many people identify outside the binary; it defines what they are *not*, but not what they *are*.

## 17. Further information, advice and training

The Gender Identity Research and Education Society (GIREs) will be very pleased to help any employer or employee undertaking a transition at work. This includes providing a training workshop for the staff involved in, or affected by, the transition process. Contact should be made with the charity via the addresses or telephone numbers given on its website.

## 18. Useful Links

UNISON guide on the rights of trans workers, “Bargaining for Transgender Workers’ Rights”. <http://www.unison.org.uk/acrobat/B1260.pdf>

The Amicus guide, entitled “Combating Homophobia and Achieving Equality for LGBT Workers - A Negotiator’s Guide”, which includes substantial sections on trans issues. [http://www.amicustheunion.org/pdf/Negotiators Guide - LGBT.pdf](http://www.amicustheunion.org/pdf/Negotiators%20Guide%20-%20LGBT.pdf)

ACAS guide entitled “The Equality Act - What’s new for employers” <http://www.acas.org.uk/CHttpHandler.ashx?id=2833&p=0>

Gender Identity Research and Education Society website: <http://www.gires.org.uk>

Gender Recognition Panel: <http://www.grp.gov.uk/>

Criminal Records Bureau: There is a special procedure in place to safeguard the identity of transsexual people. Contact Clare Blackburn, CRB Investigation Manager, who will discuss this matter in confidence with you on 0151 676 1523.

Freepost NWW5699A

PO Box 165

Liverpool

L3 1ZY

Enclosures should be double-enveloped and marked “Private and Confidential.”

## 18. Terminology

### Introduction

Terminology in the ‘transgender’ field is varied and constantly shifting as understanding and perceptions of gender variant conditions change. The concept of a ‘normal’ gender expression associated with a binary man/woman divide is, in itself, questionable.

### Gender Identity

Gender Identity describes the psychological identification of oneself, typically, as a boy/man or as a girl/woman. There is a presumption that this sense of identity will evolve along binary lines and be consistent with the sex appearance. Where this is the case, people may be described as cisgender. However, some people experience a gender identity that is completely, or somewhat, inconsistent with their sex appearance; they may regard themselves as gender neutral, that is, non-gendered, or as embracing aspects of both man and woman. People have the right to self-identify, and many people, especially among the young, reject the whole idea of binary tick-boxes, and use more wide-ranging, open terms such as pan-gender, poly-gender, third gender, gender queer, neutrois and so on. A few are non-gendered, identifying neither as men or as women.

### Sex

Sex refers to the male/female biological development—the phenotype. In an infant, the sex is judged entirely on the genital appearance at birth. Other phenotypic factors such as karyotype (chromosomal configuration) are seldom tested unless a genital anomaly is present. There is a presumption that an apparently male infant will identify as a boy, and vice versa.

### Gender Role

The gender role is the social role – the interaction with others which both gives expression to the inner gender identity and reinforces it. Despite the greater gender equality in modern Western culture in terms of: the subjects studied in school and at university; the choice of friends; work and domestic arrangements; dress and leisure pursuits, there is still a presumption of conformity with society’s ‘rules’ about what is appropriate for a man or a woman, a boy or a girl, especially in terms of appearance. Too great a transgression often causes anxiety and discomfort in those who witness it.

### Gender variance/ gender dysphoria / gender identity disorder

It is now understood that the innate gender identity, although powerfully influenced by the sex of the genitalia and the gender of rearing, is not determined by these factors. There is evidence that sex differentiation of the brain may be inconsistent with other sex characteristics, resulting in individuals dressing and/or behaving in a way which is perceived by others as being outside cultural gender norms; these

unusual gender expressions may be described as gender variance. Where conforming to gender norms causes a persistent personal discomfort, this may be described as gender dysphoria. In many, this includes some level of disgust with the phenotype, since this contradicts the inner sense of gender identity. Gender dysphoria is not a popular term with those experiencing the condition since it has become associated with the DSM-IV<sup>10</sup> 'clinical diagnosis' of gender identity disorder. Both these descriptions imply a diagnosis of 'pathology' and mental illness, whereas the more neutral term, gender variance, denotes that these departures from stereotypical gender experience and expression are part of a natural, albeit unusual, human development.

### **Transsexualism**

When gender dysphoria is experienced to the degree that medical intervention is necessary to facilitate a permanent transition to a gender role that accords with the gender identity thus alleviating the intense discomfort, it may be regarded as transsexualism. In the United Kingdom, those who intend to undergo, are undergoing or have undergone gender reassignment, under medical care may obtain legal recognition of their new gender status in accordance with the Gender Recognition Act.

### **Gender Confirmation Treatment**

Those transitioning permanently usually have gender confirmation treatment that includes hormone therapy, and often surgery, to bring the sex characteristics of the body more in line with the gender identity. Such surgery may be referred to as gender confirmation or reassignment surgery.

### **Transgender**

Transgenderism has had different meanings over time, and in different societies. Currently, it is used as an inclusive term describing all those whose gender expression falls outside the typical gender norms; for example, those who cross-dress intermittently for a variety of reasons including erotic factors (transvestism), as well as those who live continuously outside gender norms, sometimes with, and sometimes without, medical intervention. There is a growing acknowledgement that although there is a great deal of difference between, say, a drag artist and a transsexual person, there are nonetheless areas in the transgender field where the distinctions are more blurred; for example, a person who cross dresses intermittently for some years, may later transition fully to the opposite role.

### **Transition**

Transition is the term used to describe the point at which a permanent change of gender role is undertaken, in all spheres of life—in the family, at work, in leisure pursuits and in society generally. Some people make this change gradually, however, others emerge overnight.

---

<sup>10</sup> Diagnostic and Statistical Manual of Mental Disorders – IV, American Psychiatric Association

### **Affirmed gender**

‘Affirmed’ gender may be used to describe the post-transition gender role. Sometimes it may be called the ‘new’ role. These terms are often preferred to the term ‘acquired’ gender which is specific to the Gender Recognition Act (see below). Transsexual people are not acquiring a new gender identity, but they are affirming their inner, and until transition, hidden, gender identity.

### **Trans men and trans women**

The expression trans is often used synonymously with transgender in its broadest sense. Sometimes its use is specific; for instance, those born with female phenotype but identifying as men may be referred to as trans men; and those born with male phenotype but identifying as women may be referred to as trans women. Where trans people have transitioned permanently, many prefer to be regarded as ordinary men and women.

### **Sexual Orientation**

Sexual Orientation is a separate issue from gender identity. Trans people may be gay, straight, bisexual or, occasionally, asexual. Their sexual orientation may remain the same through the transition process, or it may change.

### **Gender Recognition Act (2004)**

Under the Gender Recognition Act, trans people who experience severe gender dysphoria described above, and have medical treatment for the condition, may apply to the Gender Recognition Panel (GRP) for a Gender Recognition Certificate (GRC). The GRC then entitles them to recognition of the gender stated on that certificate “for all purposes“. Where the birth was originally registered in the UK, the GRC may be used to obtain a new birth certificate. Nearly 3,000 people have now made successful applications for legal recognition of their new gender status to the Gender Recognition Panel (GRP). Those seeking a change of gender status must provide the GRP with evidence of a ‘diagnosis’ of persistent gender dysphoria, and must convince the panel of their intention to live in the new role for the rest of their lives. This is a paper exercise and does not require the applicant to appear in person. Details of medical treatment and relevant dates are required. Genital surgery is not a requirement, although where it has taken place, applicants must supply details. The distinctions between those who qualify for GRCs and those who do not, are not necessarily medical. Trans individuals who are legally married, or in a Civil Partnership and do not wish to annul or dissolve the legal relationship, are not permitted to have a GRC. An Interim GRC of 6 months duration may be obtained, but it confers no legal rights and serves only as a way of annulling or dissolving the legal relationship, whereupon the interim certificate may be converted to a full GRC. The GRC gives trans people the right to marry someone of the opposite sex, and to have a civil partnership with someone of the same sex (Civil Partnership Act, 2004).

---

## **<sup>1</sup> The Equality Act 2010:**

### **Section 13**

#### **Direct discrimination**

- (1) 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.

### **Section 19**

#### **Indirect discrimination**

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
  - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
  - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
  - (c) it puts, or would put, B at that disadvantage, and
  - (d) A cannot show it to be a proportionate means of achieving a legitimate

### **Section 16**

#### **Gender reassignment discrimination: cases of absence from work**

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of gender reassignment.
- (2) A person (A) discriminates against a transsexual person (B) if, in relation to an absence of B's that is because of gender reassignment, A treats B less favourably than A would treat B if—
  - (a) B's absence was because of sickness or injury, or
  - (b) B's absence was for some other reason and it is not reasonable for B to be treated less favourably.
- (3) A person's absence is because of gender reassignment if it is because the person is proposing to undergo, is undergoing or has undergone the process (or part of the process) mentioned in section 7(1).

### **Section 7**

#### **Gender reassignment: definition**

- (1) A person has the protected characteristic of gender reassignment 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.
- (2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.
- (3) In relation to the protected characteristic of gender reassignment—
  - (a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
  - (b) a reference to persons who share a protected characteristic is a reference to transsexual persons.