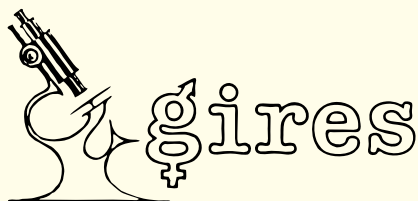


Transition at work

Guidelines for employers

Gender Identity Research and Education Society

www.gires.org.uk



MELVERLEY, THE WARREN, ASHTEAD, SURREY, KT21 2SP
tel: 01372 801554.

Issues to be Discussed

Abstract

This document explains the issues that an employer has to confront when informed that an employee intends to change their gender role in the workplace.

1 Introduction

One of the most important factors in the successful management of an employees transition from one **gender role** to another 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.

2 Issues to be Discussed

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)¹
- 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**, and how they will be dealt with.
- 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.
- The expected point or phase of **change of name, personal details and social gender**.

¹Note: in a few occupations it may be necessary for the work to be performed only by a person of one specific gender, in which case ask **GIRES** for further information.

Memorandum of Understanding

- 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.
- What amendments will be required to **records** and systems and the safeguards of their security.
- What the implication are for **pensions** and **insurance**.
- Whether a **transsexual** individual is adequately covered by existing policy on issues such as confidentiality, harassment² 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.
- Liaison with any clients or external agencies in respect of any outstanding matters in which the transsexual individual is currently involved.

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.

3 Memorandum of Understanding

All agreements arising from the initial meetings should be drawn up into a written '*Memorandum of Understanding*'. The transsexual member of staff and the line manager should sign this document.

²Discussion and examples of workplace harassment of gender variant people may be found [on the GIRES website](#).

The Role of Occupational Health/Welfare

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.

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.

The Memorandum is a confidential document. There needs to be agreement on where copies should be kept and who should have access.

4 The Role of Occupational Health/Welfare

The role of Occupational Health 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 **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** and would not presume to offer any opinion to individuals who are considering this. However OH 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 an individual to return to work, who may not initially be able to undertake all aspects of their 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.

5 Understanding the Likely Timescales for Treatment

It is good practice to discuss as far as possible in advance the time away from work that an individual will need to undergo 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.

This is a general guide only and it is paramount to take individual needs into account on every occasion.

6 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 transsexual 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.

Discussions should take place on two levels, general information about transsexualism and specific information to enable people to understand

Use of Single Sex Facilities

the situation of the particular person involved. At the point of change, it is common for transsexual people to take a short time off work and return in the new name and **gender role**. This can be used as an opportunity to brief others. In all cases, the legal obligations of management should be explained and the unacceptability of harassment made clear.

Transsexual employees are entitled to expect support from the employer, which should include discussions and explanations for other members of the workforce or members of the public about the practical implications of **gender reassignment** as and when necessary.

While it is good practice for the employer to issue a stern warning to other employees about the disciplinary consequences of discrimination against the **transitioning** employee, this should be accompanied by training. That will ensure that other employees understand the nature of **gender variance** and accept the transitioning employee's right to equal treatment. Otherwise, the other employees may feel uncertain about how to relate to the transitioning employee or even resent the way they are forced to deal with him or her, which may lead to the employee's isolation.

7 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 may be appropriate.

8 Use of Single Sex Facilities

The Human Resources Department and the individual should agree the point at which the use of facilities such as changing rooms and toilets should change from one gender to another. In the case of *Croft v. Royal Mail Group PLC* 2003, the Court of Appeal held that an employee who was undergoing male to female gender reassignment had not been discriminated against on the ground of sex when her employer refused to let her use the female toilet immediately and instead required her to use a gender-neutral disabled toilet as a temporary measure. In the Court of Appeal's view it was inherent in a situation involving the use of toilet facilities

Dealing with the Media

by employees undergoing gender reassignment that there be a period during which an employer is entitled to make separate arrangements for those undergoing the change. However, this does promote a negative view and good practice would be to identify facilities, which are rarely used as an option for an interim period.

An appropriate marker for changing the facilities used by the employee may, for example, be the point at which the individual begins to present permanently in the new **gender role**.

Once the **gender reassignment** including surgery has been completed it would certainly be sex discrimination to prevent an individual using the appropriate facilities according to the permanent gender role. Furthermore, a person who has acquired a **Gender Recognition Certificate** must be treated for all purposes as being of the new gender.

9 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.

10 Dealing with the Media

Given the sensitivity of gender reassignment, there is always the possibility of intrusion from the media. 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 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 at home. The wishes of the individual must be considered in any response given to the media.

11 Personal Records and References

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 for example **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.

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.

12 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 a **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.

13 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

Useful Links

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. 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.

14 Other Transgender People

The above guidelines deal with employers' duties to people who are intending to undergo [transition](#) at work or have previously transitioned, not those who adopt an opposite [gender role](#) on a part-time basis. The Gender Reassignment Regulations do not provide protection for transvestite members of staff, or those who occasionally cross-dress. Nonetheless, it is good practice to provide equal treatment to all [transgender](#) people, whether or not they intend to undergo full-time and permanent transition to a new gender role.

15 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](#).

16 Useful Links

UNISON guide on the rights of trans workers, "[Bargaining for Transgender Workers' Rights](#)".

The Amicus guide, entitled "[Combating Homophobia and Achieving Equality for LGBT Workers - A Negotiator's Guide](#)", which includes substantial sections on trans issues.

17 Glossary of Terms

Gender Identity

Gender Identity describes the psychological identification of oneself 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.

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 with these

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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** 'clinical diagnosis' of gender identity disorder published by the American Psychiatric Association. 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 variance** 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 are intending to undergo, undergoing or having undergone gender reassignment, under medical care are protected in law. Those who have changed their role permanently 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 is sometimes referred to as gender 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

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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.

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 relationships may remain the same through the transition process, or they may change.

Gender Recognition Act (2004)

Under the **Gender Recognition Act**, trans people who experience severe **gender variance** 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. Over **2,000 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 it of their intention to live in the new role for

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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, and do not wish to dissolve that marriage, 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 dissolving the marriage, whereupon it may be converted immediately 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](#)).