

Equality and Diversity
Transgender Policy Guide for Employers
2015



Looking after trans, non-binary and non-gender employees in the workplace

CODE of CONDUCT

Our organisation is proud of its equality and diversity policy and its commitment to fairness and respect towards its employees and its service users.

We treat everyone with respect and have particular regard for the 'protected characteristics' under the equality Act 2010:

age, disability,
gender reassignment,
marriage and civil partnership,
pregnancy and maternity, race,
religion or belief, sex or sexual orientation.

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.

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GUIDANCE on EMPLOYMENT of TRANS PEOPLE

Executive summary

This document provides a guide for an employer on supporting trans people, including those who are non-binary and non-gender in the workplace¹. Trans people are frequently disadvantaged at work, although this is not always deliberate. All existing and new practices and policies must be scrutinized to ensure that they take account of the impact they may have on minority groups, such as trans people.

People work better if they can be themselves so making trans people welcome makes good business sense. About 1% of the workforce may express their gender in ways that do not conform to the typical 'man' or 'woman' binary model.^{2,3,4} However, many trans people still choose not to express their feelings in the workplace because they fear a transphobic reaction from their employers and co-workers. This causes great stress so they are unlikely to perform to the best of their ability. A workplace in which diversity, including different gender identities, is celebrated, ensures that valuable staff are recruited and retained - an approach that benefits everyone, not just the groups targeted.



Trans employees are specifically protected by virtue of having the 'protected characteristic' of 'gender reassignment' under the Equality Act 2010 (EA) and, of course, they enjoy the protection afforded by the Data Protection Act 1998, and Human Rights Act 1998 (public sector). A small minority of trans people are also protected under the Gender Recognition Act 2004 (see: Summary of Law and Good Practice).

¹ Throughout this document, the description 'trans' is used to include all those whose gender identity (man, woman, somewhere in between, or fluctuating) does not match, the sex assigned at birth (male or female) and entered on the birth certificate. (N.B. some groups use the asterisk - trans* to emphasise the inclusion of all identities outside 'man' and 'woman'; see also Annex x Terminology)

² Glen F, and Hurrell K. (2012) Technical note: Equality and Human Rights Commission. EHRC point out that this result in a cohort of 10,000, cannot necessarily be extrapolated to the whole population. www.equalityhumanrights.com/uploaded_files/research/rr75_final.pdf

³ Clark,TC, Lucassen, MFG, Bullen,P, Denny, SJ, Fleming, TM, Robinson, EM, Rossen, FV. New Zealand (2014) Society for Adolescent Health and Medicine. Published by Elsevier Inc. 55, Issue 1, Pages 93-99, 1.2% reported being transgender, 2.5% reported being not sure about their gender www.jahonline.org/article/S1054-139X%2813%2900753-2/abstract

⁴ Gender Identity Services report that the numbers being referred to them are rising at 20% p.a., and at 50% p.a. among children and adolescents

The employer is responsible for the following tasks:

- looking at existing policies and protocols and changing them where they might disadvantage a trans or non-binary person; this will help to avoid 'indirect discrimination' (see Law and Good Practice);
- providing a policy for the transition at work, and the employment of, trans staff, so that there is no risk of direct discrimination against trans people in the workplace (see Law and Good Practice, and Memorandum of Understanding);
- taking 'positive action' to recruit from these minority groups (see Law and Good Practice below);
- introducing a visible and publicised Code of Conduct in relation to all 'protected characteristics' (see page 1);
- running staff training and celebratory events to support trans staff e.g. LGBT History month (see Awareness Training and Celebrating Diversity);
- introducing training for staff about how to interact respectfully with trans people who are customers, or with whom the employer has other business dealings.



1. Summary of the Law and Good Practice



The Equality Act 2010 (EA) specifically protects trans people, as well as eight other groups (see page 1). Trans people are described as proposing to undergo, undergoing or having undergone a process (or a part of a process) to change their social role and gender expression. This means they may use a new name and pronouns, and dress differently. Some may have medical treatment, but they don't have to in order to be protected by the law. The EA potentially covers people who only undertaken only a small 'part of the process', such as name and pronoun change. The law in this area may continue to evolve, so it is important that employers update their equality and diversity policies where necessary.

Trans people are protected, as service users, in the delivery of goods, facilities, and services.

All employers are subject to the EA although, in the private sector, employers are under less pressure to take pro-active steps with regard to embedding equality in their practices and protocols. It is good practice, however, and protects the employer against potential legal action, if the Public Sector Equality Duty (PSED) is used as a model. Employers and service providers in the public sector have a general duty to have due regard to the following:

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



1a. Direct discrimination occurs when a person is treated less well, because they have a protected characteristic, than a person who does not have that characteristic. This applies also when a person is discriminated against because they are perceived to be trans – even if they are not. Those associated with trans people, such as partners, spouses, other family members or carers are also protected against discrimination.

John told his line manager that, after the Christmas break, he would be returning to work as Jenny. Jenny became aware that her Christmas bonus had not been paid. At first she thought it was just late, or a mistake. When she asked about it, she was told that she had performed poorly over recent months. This was not true, and she was able to prove that her performance had been excellent. All the other employees whose performance

had been the same as Jenny's were paid their Christmas bonuses. An employment tribunal found that Jenny's treatment was a direct result of being trans. The company had to pay the bonus and compensation.

1.b Indirect discrimination occurs when a rule that is neutral as it applies to most people, creates a disadvantage for 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 designed or amended to cater for their particular circumstances. It is not enough for an employer to say "we're treating you in the same way as we would any other employee", if that treatment puts a trans person at a disadvantage. Where it proves impossible to overcome such a disadvantage, the employer must show that they have a 'legitimate aim' and that they have taken "proportionate means" to limit the disadvantage as much as possible.

Case study

Maggie was living full-time as a woman, following her recent transition. She planned to return to work as a nurse. In the care home where she worked, all nurses wore trousers regardless of their gender status. Maggie felt that, although this policy was not inherently discriminatory as it treated everyone similarly, it had a negative effect on her. Patients and others found it harder to 'read' her as a woman, because she still had some male characteristics, and wearing trousers led to mistakes in pronouns. Patients and other staff referred to her as 'he/him'. The manager of the care home decided that although there was a 'legitimate aim' in making all staff wear practical uniforms, it was disproportionate to make Maggie comply when she was still able to do her job very well, wearing a skirt. She was therefore permitted to do so.

1c. Harassment means any unwanted behaviour that violates a person's dignity or creates a hostile environment.

Chris works in an open-plan office in a large bank. Other people's conversations are easily heard. Chris heard his colleagues making jokes about 'trannies'. Chris's father had recently changed her role, and was now known as Sally. Chris and his family are struggling to come to terms with it. Chris wanted to speak up and say how hurt he felt by the 'tranny' comments, but didn't feel able to. He knew that he would be unable to share this information with his co-workers, and he continued to keep it secret.

This kind of behaviour would prevent others also from sharing information about their gender identity, or sexual orientation, because these issues, although different, attract the same kind of prejudice. This behaviour creates a hostile environment.

1d. Victimisation occurs when someone is treated badly as a direct result of having complained, either themselves, or someone else has complained on their behalf, about discriminatory treatment under the Equality Act.

Case study

Following her return to work after transition, Joan started to use the company's gym facilities including the changing area which had a number of curtained cubicles, so Joan was able to change privately. Other women employees made discriminatory and personal comments between each other, but deliberately within Joan's hearing. Joan complained to the sports manager, who talked to the women concerned. The manager then told Joan she would have to stop using the gym facilities as it was upsetting the real women. This is victimisation.

Employers and co-workers must be aware of that they must:

- not discriminate against trans people;
- not harass trans people or create a hostile environment by using transphobic language (whether or not this is in the presence of a trans person);
- not victimise a trans person who has complained about a transphobic incident;
- if a person takes time off for treatment associated with gender reassignment, this must not be used against them, for instance, as a reason for not promoting them;
- maintain the privacy and dignity of trans people;
- ensure that measures are in place to support a person who is undergoing transition.

1e. Positive Action (case study)

A call-centre advertised for a person to join the team answering incoming phone-calls from people seeking advice. The advertisement stated: 'we welcome people of any race or religion, who may be married, or in same sex marriages or civil partnerships, pregnant, disabled, lesbian, gay, bisexual or transgender.' A large number of people applied but the two people who were equally qualified, were two men, one of whom mentioned that he had transitioned 6 months ago. The interviewer chose this man for the job, because even though the two men were equally qualified, trans people were not well represented in the workforce.

This is 'positive action' which is permitted under the Equality Act. It is not positive discrimination, which would be illegal.

1f. The Gender Recognition Act, 2004 (GRA), allows those who have changed their gender role permanently to obtain a gender recognition certificate (GRC). This means that they have their new gender status, 'for all purposes'; the person automatically qualifies for a birth certificate if the birth was originally registered in the UK. If a person has a GRC, information about the person's gender history is described as 'protected information', so it must not be passed on to anyone without the permission (preferably written) of the person concerned. Under GRA s22(4) if member of staff discovers, in the course of doing their job ('in an official capacity') that a work colleague has a trans history, and the staff member shares that information with another person, without obtaining the person's consent, this could be a criminal act. So, it is always essential to have the permission of the trans person, before sharing this information with anyone else. There are a few exceptions to this rule, but these are not likely to be applicable in employment situations.

Only about 3,500 people have GRCs.⁵ Not having a GRC must not be used to disadvantage a trans person. Asking to see a GRC is not allowed, and may be regarded as harassment. It is best to treat all known trans and non-binary people as though they have the protection of a GRC. Birth certificates should also not be requested. Identification can usually be provided by passports or driving licences which may be obtained by producing a doctor's letter.

A GRC is not needed in order to change one's name, pronouns, or the way one dresses at work (see name change below). Trans people must have lived in their 'affirmed' gender (that is after they change their gender role) for at least 2 years before being granted their GRC.

Under the Marriage (same-sex couples) Act, those who transition while in a heterosexual (straight) marriage, who wish to obtain a GRC, must change their marriage into a same-sex marriage (with the written agreement of the non-trans spouse). Those in a Civil Partnership (two people of the same sex) in which one person wishes to obtain a GRC, will have to change to a heterosexual (straight) marriage (with the written agreement of the non-trans partner). This is a barrier to many trans people who would otherwise wish to obtain a GRC.

1g. Data Protection Act 1998: All IT records of the individual's personal life and medical history ("sensitive personal data") must be secured in line with the Data Protection Act, including password-protection, and should be "kept for no longer than is absolutely necessary'. Any named person who needs to access this private information, must still ask permission of the individual concerned, unless there is an emergency situation and the individual is unable to give permission. Employers should note that an individual who suffers damage by reason of any contravention by a data controller of

⁵ The GRA was enabled in 2005. The date of writing is November 2015. The 3,500 figure therefore represents 10 years of applications. The numbers will continue rise.

any of the requirements of the DPA is entitled to compensation from the data controller for that damage.

1h. The Human Rights Act 1998 (HRA) underpins all equality legislation that relates to employers in the public sector, and those for whom they provide services. Article 8, in particular, requires trans and non-binary people to be treated with respect, dignity and fairness, and to protect their privacy in family life and correspondence. Article 3 creates an absolute ban on degrading treatment. Article 14 is also important; it does not stand alone, but it ensures that all the other Articles under the HRA are delivered in a non-discriminatory way.

Employers should publish their Equality and Diversity policies, and make it clear that these policies also apply to those they contract to provide services to them, or on their behalf, so that when another organisation is bidding for contracts they are aware they must also comply with these equality and diversity policies. The gender reassignment characteristic should be specifically referred to, and understood to include all those who express identities that are trans, non-binary and non-gender.

2. Preparing for Transition

Trans people are often afraid that their employer and/or their colleagues will react badly when they disclose their intention to transition. It is recognised that this makes it hard for them to perform as well as they could, so it is important for the employer and for the individual, to have confidence in the transition policy.



The first action is to talk to the individual and find out how they want to handle it. Actions will be agreed before the transition occurs, and plans made together about how to move forward to ensure that the transition is successful.

When a person transitions as an adult, sometimes in middle age or later, the years of repression of the person's gender identity is likely to have contributed to a deteriorating mental state. The treatment is therefore life-enhancing and even life-saving, and is not undertaken lightly; it is not a 'life-style' choice. Access to treatment may be urgent

Measures must be in place to make the transition at work as smooth as possible. An agreed, personalised 'Memorandum of Understanding' (MoU), must be drawn up, covering a number of possible topics, outlined below (See section 5). The individual may, of course, suggest additional topics. This agreement shows commitment to supporting the employee at all stages, but it can be changed if necessary. Initial agreements do not always work out as expected, so there must be flexibility. Schedules may change especially for those who access NHS treatment. The likely actions include:

- ensuring that all managers at every level understand the policy on confidentiality and harassment, and the impact of legislation, especially the EA;
- deciding whether further training will be necessary, and who will do the training, and when. A rolling program of training may be set up so that new people coming into the organisation will be familiar with its equality principles. The employer must be alert to the need not to put the spotlight on the person and embarrass them. The Human Resources Department or the LGBTI champion(s), if appointed, will advise following discussion with the person concerned. (see 3 Celebration and training);
- considering any difficulties that may arise because the person has working relationships with outside organisations;
- preparing a Press statement, to be released if the need arises. No action will be taken without input from the person undergoing transition (see 4).

3. Awareness training - Celebrating Diversity

The employer should always have an appointed LGB&T champion at senior manager level, sometimes in HR or OR, who has responsibility for equality and diversity issues, and has oversight of training of the workforce. Professional trainers, local trans groups, and e-learning modules may also be involved.⁶ The role of champion, should always appear on the organisation's website, so that a person planning to transition, or experiencing transphobic bullying, has a starting point for obtaining advice and support. Events that celebrate diversity, for instance, during LGB&T history month (February) should be funded by the employer and attended by senior management.



4. Dealing with the media

The Press Officer should be briefed to deal with any intrusive questions from the Press so that they are not taken unawares. In most circumstances it is only necessary for them to indicate that an equality and diversity statement is on the website (home page) and will be adhered to by the employer. This includes stringent privacy and respect measures.

PRESS RELEASE
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.

It is not necessary to mention any specific protected characteristic, or to confirm that a trans person is employed by that organisation. Even if the identity of the individual becomes known to the media, the employer must give no details to the press, unless expressly permitted by the individual concerned. Where this does occur, a risk assessment should be undertaken immediately. If the risk assessment indicates that it would be helpful, and the person wishes to do this, the employer may provide a job that doesn't involve contact with members of the public until media interest dies down. It may also be necessary to help the individual move from the present address if door-stepped by the media or otherwise harassed at home. An employer, should assist in protecting the individual, including complaining to the Press Complaints Authority.

⁶ Elearning at <http://www.gires.org.uk/e-learning>

5. The Memorandum of Understanding

The Memorandum is a confidential document. It does not represent a binding and unchangeable arrangement, but rather a commitment to engage with, and support, the employee at all stages. Hard copies must be secured in double sealed envelopes with the name(s) of the person(s) who are allowed to open them, clearly marked. The document must not be accessible to unauthorised personnel; it should be in a locked drawer or file. Any information held in computer files must be password protected as part of the overall data protection. IT systems must prevent unauthorised persons coming across this document, or any other document that would give away a person's gender history.

The Memorandum should be reviewed at least every three months, but reassessed at each significant stage of the process, and at any time that the employee asks for this to be done. Discussions will pinpoint any likely problem areas. Take steps to avoid these, rather than deal with them after they have arisen. Action will not be taken without first seeking the insights and consent of the individual.

The initial meetings and the drafting of the document may be undertaken by the line manager, often with a member of Human Resources. The trans member of staff should be offered the support of a colleague and/or union representative at all the meetings where transition is discussed, the memorandum is drawn up, agreed, and subsequently reviewed. The trans member of staff and the line manager (or other senior member of staff) should sign this document once it is agreed.



All participants in the meetings will keep these discussions in complete confidence.

Issues, which may be considered by the individual and the manager (and any additional individuals that the trans person chooses) include:

- The change of name, personal details and social gender. (see Name change and privacy and confidentiality);
- Record keeping of sensitive information (see Storage of protected information);
- How 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; (see Informing colleagues);
- Whether there are duties within the role that should not be undertaken at specific times within the process; change of job if requested or required; risk assessments (see Occupational Health);

- The expected timescale of the medical and surgical procedures and the time off required for medical treatment (see Time off for medical treatment);
- Agreeing any dress code requirements. Flexibility and compromise, may be required for those who cannot meet the employer's code. (see Dress Code);
- Use of toilets and changing facilities;
- What the implications are for pensions and insurance (see Insurance matters; Pensions and retirement);
- Where DBS checks are required, following a change of name, a special procedure may be accessed;⁷

5a. Name and Title change - Privacy and confidentiality

The employer must agree how and when the name-change is to occur. Name change can occur without any legal process, informally, upon request by the trans person. The employer should not insist on people providing more than a simple signed statement saying that they are changing from the old name and title, to the new one. In addition, driving licences and passports can be presented; these are easily changed with a doctor's letter, or the doctor's letter itself may be used as evidence of the individual's intention to transition.

However, trans people are often required by banks and other service providers to submit a Statutory Declaration (made before a solicitor or in a Magistrates Court)⁸ or a Deed Poll document, and possibly a doctor's letter prior to changing documentation. They may therefore already have such documentation and can produce any one of these as evidence of the intention to keep the new name and gender marker permanently. If, for whatever reason, the employer requires any of the official documents mentioned above, the employer should cover the cost. The changes to the individual's records are managed under the Data Protection Act 1998. The employer must ensure that, in accordance with this Act, previous names, titles and pronouns, which appear in old documents, cannot be seen except by the small number of people who are authorised to see them.

The trans person's records and name badge, if worn, will be immediately updated so that they only show the current name and title.

⁷ sensitive@dbs.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/>

⁸ The cost of this varies significantly. It is good practice for the employer to cover this cost.

The employer should follow the lead of HMRC, DWP and the passport office, as well as some banks and universities, by updating its data systems to allow people to use the gender neutral title, Mx, to accommodate those individuals who identify as non-binary.

In some cases it may be necessary to keep records relating to the sex that was registered on the individual's birth certificate, for instance, for insurance purposes. These must be treated in strict confidence



Extra caution is needed when, for example, security checks and medical screening are undertaken. Any information arising from these checks that could reveal a person's trans history must be restricted to the staff whose specific duties are involved, and who must understand the need for complete confidentiality. A person who deliberately breaches another person's privacy, could lose their job.

5b. Storage of protected information

Hard copies of any old documents that cannot be altered, or replaced, must be stored securely in sealed envelopes, marked strictly confidential, and kept separately from the files of other employees, rather than just in a filing cabinet. The name(s) of those who are allowed to open these envelopes must be clearly written on the outer one. All IT records of the individual's personal life and medical history must be secured in line with the Data Protection Act, including password-protection. Any named person who needs to



access this private information, must still ask permission of the individual concerned, unless there is an emergency situation and the individual is unable to give permission. The aim of these precautions is to prevent a member of staff accidentally coming across this sensitive information in the office.

Trans people may choose to disclose that they have changed their gender role and status in some circumstances, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed.

Breaches of confidentiality should be treated in the same manner as disclosure of the highly personal details of any other employee protected under the Data Protection Act 1998. This information is 'sensitive', and should be "kept for no longer than is absolutely necessary'. Failure to protect sensitive data is against the law. In the case of a person having a GRC, a person obtaining protected 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.



5c. Informing colleagues

The manager and the individual should work out together how best to inform work colleagues about the trans person's plan to transition. Trans people are not obliged to inform their employer about their trans history as a condition of employment or promotion. So, if a person transitioned before joining a company or organisation, no information about this should be passed on to others unless absolutely necessary, and then only with the permission of the person concerned. Many trans people wish to keep their trans background private, while others are willing to discuss it openly.

This information cannot be kept secret when a person changes their gender role in the workplace, so careful planning must be done in the run-up to that happening. It may not be necessary to inform the entire workforce. A case by case decision on the extent of the disclosure of this information should be agreed by the person concerned and the employer. External clients or agencies that the trans individual is currently working with, may also need to be informed. So, levels of disclosure may vary depending on the size of the company and the extent to which the individual who is planning to transition has face to face contact with co-workers, and contact with clients.

The wishes of the individual are most important, although management and the HR department have the responsibility to see that the process of informing others is safe and respectful. In some circumstances the trans person may wish to disclose these matters personally to some or all of their contacts. If this is the case the employer will need to know when this is going to happen, and what kind of information will be given to work colleagues, so that support is available to the members of staff involved.

It must also be recognised that some non-binary people will make changes that must be accommodated by the employer, but do not necessarily involve the complete transition of social gender role, as occurs in the following example. In every case, the changes, and any need to impart these to others in the workforce, must be dealt with according to the individual's wishes.

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.

From David to Claire

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

Stage 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;

Stage 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 David, but as Claire. 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

D/Claire

N.b Although Claire suggests that people should ask her questions, it must be made clear in any training provided to the workforce, that some questions are unacceptable, for instance, you should not ask people intrusive questions about surgery, or other treatment.

5d. The Role of Occupational Health

A person experiencing gender dysphoria should be offered the opportunity to be referred to Occupational Health for advice. The role of Occupational Health (OH) will be to advise the employer on fitness for work issues as well as provide appropriate advice on any medical issues which may impact on an individual's ability to carry out the full scope of the job.

Generally speaking, trans people are not more at risk than their work colleagues. The employer should ensure that its health and safety precautions include ongoing Risk Assessments for trans employees, where the job is physically demanding. Trans women may lose upper body strength when having hormone treatment. Before having breast surgery, trans men wear breast binders which restrict their movement and may cause back problems. Assessments should take account of these possible risk factors.

Following any surgery, advice may also be needed about any temporary adjustments to help those returning to work, who may not, at first, be able to undertake all aspects of their former role. Trans men may have chest reconstruction surgery before, or around the time of, role change. A complication for trans women is that facial hair removal is a very long process, and on each occasion (depending on the method used) they may first have to have two days' beard growth.

Trans people hardly ever wish to change their job within an organisation, but if they request this, either as a temporary measure, or on a more permanent basis, the employer should try to help them to do this. A few occupations may involve an Occupational Requirement (the work to be performed only by a person of one specific sex). An agreed temporary move to another job may be advised. Trans people must not lose their jobs because of this, and they may be retained where other staff are able to do the task where the OR applies. Trans people with GRCs *must* be regarded as being of the post-transition gender status for the purposes of ORs. Others who do not have GRCs, *may* be just as suitable. Common sense should prevail.

Occupational Health cannot seek to replace the specialist medical advice, assessment and support required by individuals who are considering gender reassignment. However OH staff are able to offer confidential support and counselling for those who are suffering emotionally at what can be a distressing period of their lives.

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.

5e. Time off for medical treatment

Time off for treatments associated with gender reassignment are specifically protected under the Equality Act 2010, so that absences cannot be used against them when, for instance, considering promotion. Trans people may need to have time off that is not in line with the employer's policy for other employees.

It is good practice to discuss as far as possible in advance the time away from work that an individual will need. The memorandum can only be a general guide initially. Timescales may change over time, and be unpredictable if treatment is in the NHS. 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, especially for those being treated in the NHS, where waiting times are very long. The employer should consider introducing health insurance schemes for gender specific treatments, because during these waiting times, trans people who are, meanwhile, untreated, will not be able to perform as well as they otherwise could.

It is not necessary for people to have time off work in connection with hormone therapy. Chest surgeries will generally require shorter recovery times, than genital surgeries, but all of these will vary depending on the person, and the actual surgery carried out. These are not all the same, so the trans person should obtain an estimated time, from the surgical team. Genital surgeries are not scheduled until, at least, the end of the first year of treatment in any event.

5f. Insurance Matters

The employer is advised to inform their underwriters, in strict confidence, if they know of a trans employee's history, when registering them for insurance and benefits, because some insurers automatically invalidate a policy if a major fact such as gender reassignment is not disclosed. The employee must be told that this is going to happen. If the employer is unaware that an employee has undergone transition, the employee must disclose their trans history because they could be liable, if they were involved in an accident at work, and their insurance was not valid. Therefore, the insurer's policy in this matter must always be made clear to all employees, because it may not be known that a person has a trans history. Once this information is known, the process for entering it into the insurance policy must not be visible to others, and the person(s) who now have that information must keep it completely confidential.

5g. Pensions and Retirement

Everyone born after April 1955 now receives state pension at 65. Women born on or before 5 April 1950 were entitled to a pension at 60. Those born between 1950 and 1955 can claim it at a point between 60 and 65. For state pension purposes, trans 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 before April 1955 can only claim state pension in line with the sex on the original birth certificate - that is for trans women at age 65 and for trans men at 60. Under recent case law, a trans 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.

It is the responsibility of the employer to take steps to keep confidential the reason for an individual's apparently early or late retirement.

5h. 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, when starting to live full-time as a woman, flexibility should be allowed over hair length and style, jewellery and make up. Where a uniform requires trousers to be worn by both men and women, trans women may prefer to wear a skirt so that others are clear about her gender status. Where necessary, a new uniform should be fitted and ready well in advance of the change of gender role. Flexibility must also be extended to those who

live androgynously (neutral gender expression) and would not be comfortable in a clearly female or male mode of dress.

It is possible to accommodate a person who presents sometimes in one role, and sometimes in another and may need both uniforms in order to meet the gender specific dress code at all times. If the individual wishes, in the initial stage of transition, to be temporarily redeployed this may be facilitated, but must never be imposed by the management. However, gender presentation may be mixed, and still be accommodated by the employer as the following case shows.

Case Study Alex was finally able to start living as a woman in 2010, following the introduction of the Equality Act (2010) because the Act protects individuals who change their gender expression without having medical intervention. Not everyone is able to, or indeed wishes to, have surgery and hormones to achieve an authentic self: in Alex's case she has found successful transition has come about through a steady process of gender redefining. Her gender expression is non-binary or genderqueer, and she is regarded as having undergone 'a part of a



GrrlAlex identifies as a trans woman, and uses female pronouns.

process'. Such approaches are becoming increasingly visible in a new generation of trans* people.

In 2013, at a legal hearing against a company who were threatening to withdraw work from her business, Alex demonstrated that the law is quite explicit in affording protection to "a person who is proposing to undergo, is undergoing, or having undergone, a process (or part of a process)...by changing physiological or other attributes of sex". Importantly, Alex was able to demonstrate that her quality of work continued to be of a high standard throughout the process of her transition, and could thereby prove that concerns the company had about prejudice based on appearance, were unwarranted.

5i. Use of single-sex facilities

Facilities such as toilets and changing rooms should be accessed according to the full-time presentation of the employee in the new gender role. It is never appropriate to insist that a person who has transitioned, use only the toilets that are meant for disabled people, or unisex toilets, unless these are the only facilities available, or they are preferred by the trans person. If others do not wish to share the 'ladies' or 'gents' facilities with a trans person, then it is they, not the trans person, who must use alternative facilities.

Sufficient cubicles, designed for maximum privacy by having partitions and doors that extend from floor to ceiling, should be provided. Unisex toilets may be provided as an alternative for any person, whether trans or not, who does not wish to share with others. This may be especially important for some trans individuals (non-binary, genderqueer for instance), who do not identify either as men or as women, and would be uncomfortable entering facilities designated: 'ladies' or 'gents'.



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

The question about whether or not a person has a Gender Recognition Certificate is irrelevant, and must never be asked.

6. Religion or belief

Sometimes, people who have particular religious beliefs, or cultural views about gender presentation, claim that their 'protected characteristic' of 'religion or belief' under the Equality Act allows them to refuse to work with, or share facilities with, a person who is trans. Employers, union representatives and other work colleagues do not always know how these conflicting rights and protections should be dealt with.

There is no hierarchy among protected characteristics; one protected characteristic is not more important than another. A person's religion or belief must, of course, be respected, but it must *not* be used to discriminate against another



person because of that person's protected characteristic. If a person who has made this objection cannot understand that, although they have a right to their views (no matter how objectionable these may be to others), they do not have the right to act on those views by discriminating against a person who has another protected characteristic. It is also not acceptable to move either the trans person, or the person making the complaint, to another work area, so that they do not have to work together. A person refusing to work with a trans person will have to be dismissed.

7. Incoming calls

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 be alert to voices that do not match names and titles. Trans women may find it especially difficult when using the phone, to have their correct gender



acknowledged. Those taking incoming calls may jump to conclusions about the person, and say 'sir', which will be very upsetting. Operators should listen carefully to the name, and if that doesn't give sufficient clue, or if a mistake has been made, then it is best to apologise, ask politely, 'how do you like to be addressed'. Make a note immediately of the name and matching pronouns and title, so that any ongoing conversation, and future correspondence will not give offence.

Monitoring

Monitoring of trans people in terms of counting how many there are in your organisation, is a sensitive issue and will not always be welcomed by trans people:

- 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 always an identity, but a transient state and those who pass through it are 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.

Make sure that proper preparations have been undertaken by training the workforce, to ensure, as far as possible, that no adverse consequences will arise.

Be prepared to provide the awareness training and, if necessary precede an attempt to count trans people by monitoring attitudes among staff towards all protected characteristics.

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....?

If direct monitoring is to be undertaken on the numbers of trans people employed, it is recommended that it follows the questions on sex and gender identity. These two questions alone may reveal a mismatch. The EHRC asked 2 questions relating to people whose gender identity was not congruent with their assigned sex. Question 3) elicited a 1.4% figure; and question 4) was specifically aimed at those covered by the gender reassignment characteristic and elicited a 1% figure.

1. *What is your sex?*

- *Female*
- *Male*
- *Other*
- *Prefer not to say*

2. *What is your gender identity?*

Do you identify as:

- *A woman*
- *A man*
- *Prefer to self-prescribe [.....]*
- *Prefer not to say*

3. *Is your gender identity a complete match with the sex you were assigned at birth?*

- *Yes*
- *No*
- *Prefer not to say*

4. *Have you gone through any part of a process, or do you intend to (including thoughts or actions) to bring your physical sex appearance, and/or your gender role, more in line with your gender identity? (This could include any of the following: changing your name, your appearance and the way you dress, taking hormones or having gender confirming surgery)*

- *Yes*
- *No*
- *Prefer not to say*

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.



TERMINOLOGY

Introduction

Terminology in the 'transgender' field is varied and constantly shifting as understanding and perceptions of gender variant conditions and gender nonconforming expressions change. The terms described below may vary in their usage and may become outdated. The concept of a 'normal' gender expression associated with a binary man/woman divide is, in itself, unsatisfactory, since **"the expression of gender characteristics that are not stereotypically associated with one's assigned sex at birth is a common and culturally diverse human phenomenon that should not be judged as inherently pathological or negative".**⁹

Gender Identity

Gender Identity describes the psychological identification of oneself, typically, as a boy/man or as a girl/woman, known as the 'binary' model. There is a presumption that this sense of identity will be consistent with the, respectively, male or female sex appearance. Where sex appearance and gender identity are congruent, the terms **cisgender** or **cis** apply.

However, some people experience a gender identity that is somewhat, or completely, inconsistent with their sex appearance; or they may regard themselves as gender neutral, or **non-gender**, or as embracing aspects of both man and woman and, possibly, falling on a spectrum between the two. People have the right to self-identify, and many people reject the whole idea of binary tick-boxes, and describe themselves in **non-binary**, more wide-ranging, open terms such as **pan-gender, poly-gender, third gender, gender queer, neutrois** and so on. Pronouns he/she, his/hers, may be replaced with more neutral pronouns such as: they, per, zie or fey; and the title Mx may be preferred to Mr, Mrs, Miss or Ms.

Sex

Sex refers to the male/female physical development – the phenotype. In an infant, the sex is judged entirely on the genital appearance at birth, but internal reproductive organs, skeletal characteristics and musculature, and the brain, are all sex differentiated. 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

⁹ World Professional Association of Transgender Health (2011) Good Practice Guidelines for the assessment and treatment of gender dysphoria in adults <http://www.rcpsych.ac.uk>

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. A significant departure from stereotypical gender expression often causes anxiety and discomfort in those who witness it. Their own discomfort may be reflected back on gender nonconforming individuals, causing a continuous source of stress in social situations.

Gender variance/ gender nonconformity/ gender dysphoria

It is now understood that 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 is inconsistent with other sex characteristics, resulting in individuals having a predisposition to develop a gender identity that is not typically associated with the assigned sex. They may dress and/or behave in ways that are perceived by others as being outside typical cultural gender expressions; these gender expressions may be described as *gender variance* or *gender nonconformity*. Where conforming to society's cultural expectations causes a persistent personal discomfort, this may be described as *gender dysphoria*. In many, this includes some level of disgust with the sex characteristics, since these contradict the inner sense of gender identity. As mentioned above, gender dysphoria stems also, in large part, from the stress associated with the reactions of others towards people who express their gender differently.

Transsexual

The terms '*transsexual*' and '*transsexualism*' are now considered old fashioned, and are only likely to be seen in legal and medical documents. Even there, these terms are gradually being replaced with more acceptable terminology, such as 'transgender' and 'trans' (see below). In law, a transsexual person is someone who 'proposes to undergo, is undergoing or has undergone gender reassignment' (Equality Act 2010). For some, this will involve medical intervention to adjust the appearance so that it aligns with the gender identity, and is often associated with changes to the gender role and expression, as well as names and pronouns. These changes may alleviate much or all of the discomfort. The term transsexual is specific, and does not include non-binary identities. The word 'transsexual' should be used as an adjective, not a noun. It is, therefore, never appropriate to refer to an individual as 'a transsexual', or to transsexual people, as 'transsexuals'. The abbreviation 'tranny' is also unacceptable.

Transgender

'*Transgender*' 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. It is often the preferred term for those who change their role permanently, as well as others who, for example, cross-dress intermittently for a variety of reasons including erotic factors (also referred to as transvestism). Those who live continuously outside gender norms, sometimes with, and sometimes without, medical intervention are covered by this term. There is a growing acknowledgement that

although there is a great deal of difference between say, drag artists and people who change their role permanently, there are nonetheless areas in the transgender field where the distinctions are more blurred; for example, someone who cross-dresses intermittently for some years, may later change fully to the opposite gender role. Non-binary gender identities also fall under this umbrella term.

Trans men and trans women

The expression '*trans*' is often used synonymously with 'transgender' in its broadest sense. Recently the asterisk has become an additional symbol of inclusion of any kind of trans and non-binary gender presentation – hence trans* person.

'Trans men' are those born with female appearance but identifying as men; and those born with male appearance but identifying as women may be referred to as 'trans women'. The terms may also be used to imply a direction of travel, towards a more masculine or feminine gender expression, rather than a complete transformation of a person's gender status. Many trans people, having transitioned permanently, prefer to be regarded as ordinary men and women. In these cases, where it becomes essential to refer to their pre-transition status, the phrase 'woman (or man) of trans history' may be used.

Transition

Transition is the term used to describe the permanent full-time adaptation of the gender role in all spheres of life: in the family, at work, in leisure pursuits and in society generally. A few people make this change overnight, but many do so gradually over a period of time, changing their presentation intermittently, and sometimes while undergoing early medical interventions such as hormone therapy. Transition does **not indicate a change of gender identity**. The person still has the same identity post transition; the changes are to their gender role, gender expression and sometimes their sex characteristics, to bring these in line with their identity. A period of 12 months living full-time in the gender role that is congruent with the gender identity is currently required before genital surgery is undertaken. Transition in non-binary individuals is more likely to be a shift in gender presentation, rather than a complete change of role; it may or may not include medical intervention.

Affirmed Gender

The process of bringing the gender role and appearance into alignment with the gender identity, 'affirms' that identity. Thus the term 'affirmed' gender, is now becoming more common in describing the post-transition gender status. 'Affirmed' should be used in preference to 'acquired'; the latter is the language of the Gender Recognition Act, and is more appropriately used to describe the acquisition of a Gender Recognition Certificate and new Birth Certificate (see below).

Gender confirmation treatment

Those undergoing transition permanently usually have gender confirmation treatment that includes hormone therapy and often surgery to bring the secondary sex

characteristics: breasts and genitalia, more in line with the gender identity. Such surgery is sometimes referred to as gender (or sex) reassignment surgery. The term 'sex change' is not considered appropriate or polite. Surgeries such as facial feminising and body contouring may be chosen, but these are usually not provided on the NHS.

Intersex conditions

There are a number of intersex conditions (renamed Disorders of Sex Development – a clinical description which many in the UK refuse to adopt). In some intersex conditions, the appearance at birth is atypical being neither clearly male nor female. The sex (male or female) assigned, and the anticipated gender role (boy or girl) assumed at that time, may not be consistent with the core gender identity and may, therefore, result in a need to change the gender role at a later stage. In addition, some of these individuals may have had surgery neo-natally to create (usually) a female appearance. This surgery may have a disastrous outcome, since the individual may, in fact, identify as a boy. This occurs in many individuals treated in this way. Surgical intervention before the individual is able to give informed consent is now regarded, by many, as unethical.

Inconsistencies in development may be associated with atypical sex chromosomes such as Klinefelter syndrome (XXY), Jacob's syndrome (XYY), or atypical combinations of 'X' and 'Y', such as XXYYY, XYYY and so on, including mosaicism (more than one chromosomal configuration in the same individual). Genetic anomalies that are particularly associated with unusual genital appearance are: Androgen Insensitivity Syndrome, Congenital Adrenal Hyperplasia, 5 α reductase or 17 β Hydroxysteroid Dehydrogenase (HSD) deficiencies. Most of these conditions, are associated with unusual pre-natal hormone levels. Other conditions such as Cloacal Extrophy may be included in this group since babies with this condition may have poor genital development, which has led to male (XY) babies being surgically assigned as girls.

Sexual orientation

Sexual orientation is a separate issue from gender identity. Sexual orientation is associated with the sexual attraction between one person and another. This is quite different from the internal knowledge of one's own identity. Trans people may be gay, straight, bisexual or, occasionally, asexual. Their sexual relationships may remain the same through the transition process or, occasionally they may shift. So a person who is living as a man, and is in a heterosexual relationship with a woman may, having transitioned to live as a woman, continue to be attracted to women and seek a relationship with a woman – or – may be attracted to men, and therefore seek a relationship with a man. Sometimes trans people make lasting relationships with other trans people, so the possibilities are many and varied, and do not necessarily fit comfortably into typical categorisations of sexual behaviours. Those who remain in a long-term relationship, despite one partner having transitioned cannot be categorised by any existing terminology, since the sexual orientation of the non-trans partner does not change; the orientation of the trans partner may or may not shift, as described above. Sometimes, for clarity the terms: androphylic (attracted to men); and gynaephylic (attracted to women) may be used.

Gender Recognition Certificate

In 2004 the Gender Recognition Act was passed, and it became effective in 2005. Those people who have undergone a permanent change of gender status may endorse their new gender status by obtaining legal recognition in the form of a Gender Recognition Certificate (GRC). Applicants must provide paper evidence to the Gender Recognition Panel indicating that they have already changed their name, title and gender role, on a continuous basis, for at least two years; there is an expectation that they intend to live in the altered gender role for the rest of their lives. A medical opinion indicating that the applicant has experienced gender dysphoria is necessary. However, no medical treatment is required. Successful applicants acquire the new gender status 'for all purposes', entitling them to a new birth certificate registered under the changed name and title, provided that the birth was registered in the UK.

The GRC has strict privacy provisions which must not be breached by any person acquiring such information, in an 'official capacity'. Disclosure to a third party could be a criminal offence (GRA s22) (some limited exceptions apply)

The Marriage (Same-Sex Couples) Act, 2013, allows trans people to obtain a GRC within a pre-existing marriage, which will then be converted to a 'same-sex' marriage, with the consent of the non-trans spouse. When a trans person obtains a GRC within a pre-existing Civil Partnership, that partnership must be changed into a marriage, with the consent of the non-trans partner.

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/>

Disclosure and Barring Service and the specific office for trans people is as follows:

Telephone: 0151 676 1452

Email: sensitive@dbs.gsi.gov.uk

PO Box 165

Liverpool

L3 1ZY

Enclosures should be double-enveloped and marked "Private and Confidential."

www.TranzWiki.net to access support in geographical area