

Transgender and Employment

A guide for managers

Introduction

There are a small number of people in the UK who believe that their gender identity (whether they are a man or a woman) does not match their appearance and/or anatomy and who wish to undergo medical intervention in order to transition permanently from one gender to another. This is sometimes known as gender dysphoria. It is thought about 3-500,000 people in the UK feel like this, though the true numbers are unknown.

There is also a much larger (but as yet unknown) number of individuals who do not consider that the gender they were assigned at birth matches their "assigned sex" but who do not necessarily want to undergo medical intervention or surgery. Some may undergo hormone therapy but not undergo surgery, others may just try to live their lives in a way that is comfortable for them, but which may not conform to the normative gender roles.

Transsexual

The word transsexual, unlike the word transgender, has a precise medical definition and the diagnosis includes:

- An insistence by the individual that they are of the opposite biological sex (that is not due to a perceived advantage of being the other sex)
- Evidence of persistent discomfort with, and perceived inappropriateness of the individual's biological sex
- Evidence of clinically significant distress or impairment in work or social life.

Transsexual men and women want to establish a permanent gender role as a member of the gender with which they identify rather than the one they were assigned at birth, pursuing medical interventions as a part of this process.

Transgender

Transgender is a relatively new word the meaning of which is still changing, but includes:

- someone whose identity does not conform unambiguously to conventional notions of male or female gender roles
- people who were assigned a sex at birth but who feel that this is a false or incomplete description of themselves.
- Non-identification with, or non-presentation as, the sex (and

assumed gender) one was assigned at birth.

A transgender individual may have characteristics that are normally associated with one gender but who identifies elsewhere on the traditional gender continuum, or outside of it altogether.

Transitioning

The process that enables a transsexual person to alter their body to match their gender identity is known as 'gender reassignment'. Another term for this process is 'transitioning'. However 'transitioning' can also describe people who live in their new gender, or identity as a transgendered person, but who do not necessarily wish to undergo surgical treatment.

For some transsexual or transgender people their trans status is personal and they wish to keep it private. Others may be willing to discuss it confidentially, others may be happy to be quite open about their status. As their manager you must not assume that because someone in your team discusses identifying as trans with you that anyone else in the team, or organisation, knows. When someone at work is transitioning it will be important for you to discuss with them who they want to be told and all the other practical things such as the use of single sex toilets, showers etc.

People with this medical condition who decide to adopt the opposite gender to the one they were assigned at birth are known as transgender/transsexual people (the word trans will be used to indicate transgender/transsexual from now on). As a manager you should also be aware that transgender or transsexualism is not the same as, and should not be confused with, 'cross-dressing', transvestism, or sexual orientation. "Transsexual" or "Transgender" does not imply any specific form of sexual orientation; transgender people may identify as heterosexual, gay, lesbian or bisexual.

This guide aims to provide managers with some good practice guidance on managing trans colleagues in the workplace. Advice and support for individual cases can be obtained from STS HR Employee Relations or by contacting the Shared Transactional Service Centre on 0117 352 1400, or from the Corporate Equalities Team on 0117 922 2329 or equalities.team@bristol.gov.uk. Managers may feel, also, that their whole team would benefit from training or awareness raising on transsexual / transgender issues. Either HR or the Equalities Team can also help with this.

1. Successfully managing the transitioning process

Background information

If one of your staff is to undergo the transition process, you will need to make yourself familiar with what this means and what is involved. The most important issue in the whole process is the need to ensure respect for your team member's dignity at work, to involve them in all decisions, and to respect their wishes and confidentiality.

The process of changing gender is slow and arduous, with significant consequences and implications beyond the medical processes for the trans person. Although there are several stages that each trans person will have to go through, the timings will vary with each individual and each situation will be unique.

Broadly, though, these stages are:

- Following specialist medical advice and diagnosis, your team member will decide the best way forward for them, this may start with hormone treatment or surgery; each individual is different. However, they will be expected to undergo 'real life' experience living in their acquired gender.
- One year is the minimum period for the real life experience recommended under the international standards of care, however NHS patients are likely to be expected to have a minimum of two years and often more.
- Under UK law, once the person has lived fully for a minimum of two years in their new gender they can apply for a Gender Recognition Certificate that will result in a new birth certificate.

The 'real life' experience is the most likely point at which the trans person will want to deal with changing their identity in the workplace. The process can be very stressful, requiring support and sympathetic handling from all concerned, and there is an obvious need to adopt the right approach from the start.

You may want to seek the advice of Human Resources. You may also want to involve your directorate equality officer. The corporate equality team can also provide you with confidential advice and guidance. This should always be with the permission of the person involved, and at all times you should be aware of the absolute need for confidentiality and privacy unless the trans person states otherwise.

Support Plan

Discuss their transition with the member of your team. Reassure them that the council will be as supportive as possible and that there are procedures and policies in place to support them. Reassure them that they need only deal with one person as their point of contact for support throughout the process. Ideally this person should be their line manager though they could also be someone from HR or an equalities officer.

Whoever it is they will need to meet with the transitioning member of staff to agree and develop a plan for supporting and managing this at work. The plan should look at:

- whether or not they wish to stay in their current post or be redeployed elsewhere in the council;
- the expected time/date of transitioning, including change of name etc.
- what amendments will be required to be made to records and systems. HR will need to ensure the right procedures re: insurance and pension arrangements.
- when time off may be required for any medical or surgical procedures and when this will be happening
- when colleagues or clients should be informed, who should be told and who should do this and whether any training or education will be needed;
- the use of single sex facilities
- handling any harassment, hostile reaction
- confidentiality

Redeployment

The employee may wish to move to another position at the point at which they adopt their new gender. Any such requests should be raised with their line manager and considered on a case-by-case basis.

Time off

Time off needed during the transitioning process can vary. It can involve as little as two or three weeks off for medical or surgical procedures however surgery can require two or three months off. The employee is entitled to the same sickness absence and pay as other employees in the organisation. At all times managers should be prepared to be reasonable and follow the Managing Attendance policy and procedure.

Keeping records

Once a trans person has transitioned and is living in their new gender role the employer must keep utterly secure and confidential all personnel records that refer both to the process and to the previous gender. Once archived access to these records should be strictly limited to nominated people and, preferably, should not be accessed without the permission of the individual concerned. However, if it is felt that there may be additional health issues that the council needs to keep a record of then this should be discussed with the employee and, if necessary, it may be appropriate to involve the Occupational Health team.

Changing rooms and toilets

Agree with your member of staff the point at which they will change which toilets, showers etc they use. It is a requirement of UK law that a Trans person is entitled to use the facilities appropriate to their acquired gender. It will probably be the same time as they first come to work in their acquired gender and it will be necessary to tell their work colleagues. Some people may object to the member of staff using their facilities when they knew them in their previous gender.

However, it is the responsibility of the council to ensure that the transitioning member of staff's rights to privacy and dignity are respected and to support their right to use the facilities designated for their acquired gender. Other approaches, such as requiring the trans person to use the accessible toilets for disabled people, are not appropriate.

It is possible that you will feel that your team would benefit from some training or awareness raising around these issues and HR or the corporate equalities team can help with this.

Dress Codes

You need to be prepared to be reasonable about dress codes and to allow your team member to decide what they feel comfortable wearing. It is a requirement of the real life experience that someone who is transitioning wears clothes considered appropriate to their acquired gender.

When to tell other people

Transitioning is a private matter. However, it is good practice for the individual's manager to take responsibility for telling the people who need to know that an employee is transitioning unless the trans person themselves would prefer to do this. As their manager you must never tell colleagues or clients that someone is transitioning without their consent. You should also

never disclose any employee's past gender reassignment and if you do, it could be a criminal offence.

Once a full Gender Recognition Certificate has been issued a Trans person is no longer transitioning and is now their acquired gender - either female or male.

What to tell other people

Information about gender reassignment should be provided at two levels:

- General facts about gender reassignment, trans equality training etc.
- Specific information that will enable colleagues and, possibly, clients to understand what is happening and the needs of the particular person involved.

At the point of transitioning many trans people wish to take time off work to enable them to return to work with their new name and gender. This is often used as the opportunity to talk to other people about what is happening. If someone has 'transitioned' prior to joining an employer or a new department, as mentioned before, the employer should not, and has no need to, mention their trans history and to do so could be a criminal offence.

What happens at the point of changing gender at work?

The support plan should contain the date when the person intends to change their gender role. This is also the date that you, as their manager, will need to have ensured that everyone who needs to know has been told and, if possible, has received the appropriate training.

What can team members and other members of staff do to make their colleague's transition easier?

Everyone should refer to their colleague by their new name and use the appropriate pronouns. Some people may get mixed up, and the transitioning person will need to be aware that this might happen for a time. As the manager you should also be aware of the fears or concerns that some members of staff may have. You will need to ensure that the right training and information is in place to resolve any issues quickly.

It is possible that, no matter how much preparation has been made and how much support has been given, there may still be people in your team who do not understand or who are unsympathetic to the transitioning person. It is best to discuss this possibility with the transitioning person and to agree in advance how they want this handled if it happens. Any incidents of

misconduct, harassment, bullying or victimisation should be dealt with as quickly as possible. It would be good practice, at first, to arrange to meet regularly with the trans person to ensure that they feel able to raise any issues that might arise.

How should employers handle media interest?

Sometimes a story about a council employee transitioning can attract media attention. If this happens, contact the council's press office immediately - do not attempt to handle it on your own. The press office will prepare a statement which can be issued if necessary. Other staff should be advised to maintain strict confidentiality and not to provide any information. It is worth remembering that, although initial interest may be strong, it will soon disappear.

If an employee is being harassed by the media, the council should try to protect them. In extreme cases, employers and employees can complain to the Press Complaints Commission.

2. Other Workplace Issues

What about references and certificates?

When asked for a reference for a transitioning person, you must always provide it as you would provide any other reference. You should never hint at a person's trans status. If HR holds evidence of a transitioning person's qualifications, it will be their responsibility to ask them how they would like this retained if, for example, certificates are in their original name, particularly when the transitioning is complete and a GRC has been issued.

What about keeping other records?

As the person's manager you will need to ensure that internal documents such as phone lists are changed at the appropriate time. HR may also hold documents, or copies of documents, relating to the individual's old identity and they would need to ensure that all documentation complies with the law. Access to any documentation related to an individual's trans status must be restricted to staff who need the information to do their work. This could include people directly involved in the administration of a process, but not colleagues, clients or line managers.

Pensions

At a minimum, the individual should be treated as a member of their acquired gender from the date of transition, once the Gender Recognition Certificate has been issued. An employee should be advised to take professional advice concerning pension implications, their rights and the status of their pension. The Avon Pension Fund can be contacted on 01225 477000 and emailed on: Avon_pension@bathnes.gov.uk.

3. Legal Framework - Protections under the law for transsexual and transgender people

General principles

The council is interested in employing the best person for the job. Unequal treatment and discrimination, prejudice or harassment of any member of staff brings the council into disrepute. It can also be very costly. It is in the council's interest to treat our all our employees fairly and to ensure that they do not suffer any unlawful discriminatory treatment at work.

It is currently unlawful for an employer to discriminate against an employee on grounds of sex, gender reassignment, age, disability, pregnancy & maternity, sexual orientation, race, religion or belief.

Gender Recognition Act 2004

The Gender Recognition Act (GRA) enables trans people to acquire full legal status in their acquired gender. It was introduced following another European Court ruling. Its effect is that anyone who has a full Gender Recognition Certificate (GRC) can have all their documentation changed to reflect their acquired gender including their birth certificate.

The decision to grant a full GRC is made by a Gender Recognition Panel. Anyone who has lived in their acquired gender for two years and intends to do so permanently, and can produce medical evidence to support this, can apply. They do not have to have undergone gender reassignment surgery. However, if the person wishing to apply is in a marriage or civil partnership, they will only be granted a time limited interim GRC until they are divorced.

Equality Act 2010

The Equality Act outlaws direct and indirect discrimination, harassment and victimisation of transgender people in both employment and the provision of

goods and services. The Equality Act replaces the Sex Discrimination (Gender Reassignment) Regulations 1999 and the Sex Discrimination (Amendment of Legislation) Regulations 2008. Under the Equality Act, a transsexual person is someone who proposes to, starts or has completed a process to change his or her gender. The Act no longer requires a person to be under medical supervision to be protected – so a woman who decides to live as a man but does not undergo any medical procedures would be covered. In addition, it is discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured.

What happens if I tell someone?

The Gender Recognition Act introduced rights to privacy for trans people. Anyone who has information about a person's trans status is liable to criminal proceedings if they pass such information to a third party without the permission of the trans person.

Harassment and Victimisation

Trans people may be particularly vulnerable to abusive and harassing behaviour and it must be made clear to everyone that this will not be tolerated. Such harassment would also be discrimination. Such discrimination will be dealt with in the same way as harassment against any other member of staff, for example on the basis of their sex or race.

If someone does bring such a case under Equality Act they are protected from being victimised for doing so by the Act. If they feel they had been victimised by, for instance, being dismissed or not being promoted, they could bring a claim against the council in the Employment Tribunal which could be very costly for the Directorate concerned.

Discrimination in vocational training

You must also not discriminate against a trans team member who applies to do vocational training. This means equal access to training on equal terms - and an equal chance to complete it.

Rights under the Public Equality Duty

The Equality Act 2010 obliges public bodies such as the council to "pay due regard" to the need to address and eliminate discrimination and harassment of trans people in employment and in the provision of goods and services, to advance equality of opportunity for trans people and to foster good relations between transgender people and those who are not.

Human Rights law

In some cases trans people may feel their human rights are not being upheld. For more information, please see the Human Rights section on the Equalities and Human Rights Commission (EHRC) website at: www.equalityhumanrights.com.

Data Protection Act 1998 (DPA)

Under the Data Protection Act 1998, issues of trans and gender reassignment constitute 'sensitive data' for the purposes of the legislation. Such data can only be processed for the specified reasons set out in the Act.

For more information, see guidance from the Information Commissioner at: www.informationcommissioner.gov.uk.

Asylum and Immigration Act 1996

Since May 2004 a potential employer must see an applicant's proof of identity and right to work in the UK. This includes a UK/EEC passport or a full birth certificate and a P45, P60, National Insurance card or a letter from a Government agency. Some trans people may not have any identification documents in their acquired gender, and may have to disclose their trans identity to you as their future employer. You must ensure that this information is kept confidential.

For more details see information on the Home Office website at: www.ind.homeoffice.gov.uk.

4. Some FAQs concerning the law

What is gender recognition?

The Gender Recognition Act 2004 allows trans people (who are able to satisfy the necessary evidential requirements) to apply for full legal recognition in their acquired gender. Following a successful application, the law regards the trans person, for all purposes, as being of their acquired gender.

What does the legislation say about medical treatment?

The legislation does not specify a minimum or maximum time that employers should allow off for medical treatment. An employer must not treat the person any less favourably than they treat, or would treat, a person absent due to any other medical condition.

All absences should be dealt with under the Managing Attendance policy and procedures. If the trans employee is absent for a long period, dismissal on medical grounds may be considered in the same way as for any other person who is medically unfit for work.

Are there exceptions that allow discrimination against trans people?

There are, but only in limited and very exceptional circumstances, for instance relating to specific and justifiable job requirements. In the exceptional circumstance where such discrimination is being considered the advice of HR and legal should always be sought.

5. Glossary

Acquired gender

The new gender of a person who has had their gender reassigned and/ or legally recognised.

FTM

Female to male trans person. A person who is changing, or has changed, gender from female to male.

Gender

The overwhelming majority of people have a gender that accords with their anatomical sex. Gender consists of two related aspects:

- gender identity, which is a person's internal perception and experience of their gender;
- gender role, which is the way that the person lives in society and interacts with others, based on their gender identity.

Gender is less clearly defined than anatomical sex, and does not necessarily represent a simple 'one or the other' choice. Some people have a gender identity that is neither clearly female nor clearly male. For the purpose of the law, however, gender can only be male or female.

Gender dysphoria

A person with gender dysphoria may feel that they have a gender identity

that is different from their anatomical sex. As a result, they may experience anxiety, uncertainty, and/ or persistently uncomfortable feelings about their birth sex.

Gender reassignment

A process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex.

Gender Recognition Certificate

A full Gender Recognition Certificate shows that a person has satisfied the criteria for legal recognition in their acquired gender. It is issued to a successful applicant if he or she is not married or in a civil partnership. From the date of issue, the holder's gender becomes the acquired gender for all purposes.

An interim Gender Recognition Certificate is issued to a successful applicant if they are married or in a civil partnership at the time of their application. The interim certificate is issued to allow the applicant and their spouse or civil partner to end their marriage or civil partnership easily. It has no legal significance beyond this use. When the marriage or civil partnership is ended, a full Gender Recognition Certificate will be issued to the successful applicant.

MTF

Male to female trans person. A person who is changing, or has changed, gender from male to female.

Sexual orientation

An orientation towards persons of the same sex (lesbians or gay men) or towards a person of the opposite sex (heterosexual or straight) or towards persons of the same sex and the opposite sex (bisexual).

Trans

A generic term generally used by those who identify themselves as trans, transgender, transsexual or transvestite.

Transgender

Applies to a variety of individuals, behaviours, and groups whose behaviour and/or identity is different from what are considered normative gender roles. The term is also used to question the validity of gender norms and is continuing to evolve its meaning.

Transsexual

A person who takes on the characteristics of the opposite sex and lives in the gender role considered appropriate to that sex. They may be medically described as having gender dysphoria but they do not necessarily undergo full genital reassignment surgery.

Transvestite

The clinical name for a person who cross-dresses. A person who dresses in the clothing of the opposite gender. Generally, transvestites do not wish to alter their body and do not necessarily experience gender dysphoria.

6. Useful Organisations

Advisory Conciliation and Arbitration Service (ACAS)

ACAS works with employers and employees to improve working life.

Anyone can ring its helpline for advice on his or her rights at work.

ACAS National (Head Office), Euston Tower, 286 Euston Road, London NW1 3JJ.

ACAS South West, The Waterfront, Welsh Back, Bristol, BS1 4SB.

Tel: 08457 38 37 36

Helpline – 08457 47 47 47

Text relay service – 18001 08457 474747.

Website - www.acas.org.uk

Criminal Records Bureau (CRB)

The Criminal Records Bureau checks potential criminal records of individuals for employers in the public, private and voluntary sectors to identify candidates who may be unsuitable for certain work.

The CRB has a confidential checking process for transgender applicants who do not wish to reveal details of their previous identity to the person who asked them to complete an application form for a CRB check.

Criminal Records Bureau PO Box 110, Liverpool, L69 3EF

Email - CRBsensitive@crb.gsi.gov.uk

Tel - 0151 676 1452

Website - <http://www.homeoffice.gov.uk/agencies-public-bodies/crb/>

Data Protection

The Office of the Information Commissioner oversees and enforces compliance with both the Data Protection Act 1998 and the Freedom of Information Act 2000.

Information Commissioner's Office, Wycliffe House, Water Lane Wilmslow, Cheshire SK9 5AF

Data protection Help Line - 01625 545 740 or 0303 123 1113

Registration/Notification Line – 0303 123 1113

Email - notification@ico.gsi.gov.uk.

Fax: 01625 524510

Website – www.ico.gov.uk

Equality and Human Rights Commission (EHRC)

The role of the EHRC is to promote equality and human rights, and to create a fairer Britain. They do this by providing advice and guidance, working to implement an effective legislative framework and raising awareness of people's rights. The EHRC will stop providing a helpline service by August 2012.

EHRC, 3 More London, Riverside Tooley Street, London, SE1 2RG

Telephone 020 3117 0235

Fax 0203 117 0237

Email - info@equalityhumanrights.com

Website - www.equalityhumanrights.com

Equalities South West - Transgender Network

The South West Transgender Equality Network (SWTEN) is a forum of and for transgender (trans or 'T') people within the South West region. Members are individuals, groups and organisations who work for or on behalf of trans people and share a common aim to positively promote issues within the South West. For further information please contact:

Brenda Weston, Equality Development Officer - Policy and Research

Equality South West, Bishops Hull House, Bishops Hull, Taunton, Somerset, TA1 5EP

Tel - 01823 240260

Email - brenda.weston@equalitysouthwest.org.uk

Website - www.equalitysouthwest.org.uk

FTM Network

The FTM network is an informal self-help group, open to all female to male transgender and transsexual people, or those exploring this aspect of their gender.

BCM FTM Network, BM Network, London WC1N 3XX

Tel - 07948 250 778

Email - f2mlondon@hotmail.com

Website - www.ftmlondon.org.uk

GIRES (The Gender Identity Research & Education Society)

GIRES' primary mission is to improve the circumstances in which trans people live, by changing the way that society treats them.

GIRES, Melverley, The Warren, Ashted, Surrey KT21 2SP

Tel - 01372 801554

Fax - 01372 272297

Website - www.gires.org.uk

Gendered Intelligence

Gendered Intelligence is a community Interest Company which:

- Delivers arts programmes and creative workshops to trans young people
- Delivers facilitated workshops to young people in schools, colleges, youth groups and other settings from across the UK
- Offers transgender awareness training, policy development and consultation, raising awareness of young trans people's experiences and needs
- Contributes to the creation of community cohesion across the whole of the trans community throughout the UK

Website - www.genderedintelligence.co.uk

Gender Recognition Panel

The Panel processes applications for Gender Recognition Certificates. Its website features guidance on the consequences of obtaining legal recognition of an acquired gender.

Website - www.grp.gov.uk

Gender Trust

The Gender Trust is a charity that specifically helps adults who are transsexual, gender dysphonic or transgender.

The Gender Trust, 76 The Ridgeway

Astwood Bank, B96 6LX

Email - info@gendertrust.org.uk

Website - www.gendertrust.org.uk

NHS Website

NHS website - NHS Gender dysphoria, contains a large amount of useful information about the condition how it is treated etc:

www.nhs.uk/Conditions/Gender-dysphoria/Pages/Introduction.aspx

Press for Change

Press for Change is a political lobbying and educational organisation, which campaigns on behalf of all trans people in the UK.

Press for Change, BM Network

London WC1N 3XX

Email - office@pfc.org.uk

Tel - 08448708165

Website - www.pfc.org.uk

Qwest FtM UK (formerly known as Western Boys)

Qwest FtM are a group offering guidance and support for all female to male (FTM) identified people. The group is for those at any stage of transition from those still considering their gender identity to people who have completed their transition.

35a Fore Street, Wellington, TA21 8AG

Helpline - 01823 650 700 or 07811 814 302

Tel - 01823 650700

Email - info@qwestftmuk.org

Website - www.qwestftmuk.org/

Avon Trans Women

Avon Trans Women are a self-help group serving Bristol and the surrounding area. Their aim is to bring together male-to-female transsexuals & others undergoing gender reassignment and to offer support and guidance.

Website - www.avontranswomen.org.uk

Bristol City Council does not endorse and is not liable or responsible for these or the information or services offered by these organisations or sites.

Bristol City Council, Equalities and Community Cohesion Team
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