
GENDER REASSIGNMENT

GUIDANCE FOR MANAGERS AND SUPERVISORS



Women. Men. Different. Equal.
Equal Opportunities Commission

Transgenderism or “gender identity disorder” is a medical condition affecting an estimated 10,000 people in the UK. It basically means that a person identifies with the sex other than that on their birth certificate.

Most managers will never come across an employee with this condition and will never have to deal with an employee transitioning from one sex to another. However, if it does arise, it is likely to be a difficult one for the manager - because it is not a common occurrence and it is a particularly sensitive issue.

Not only is the individual likely to face prejudice and discrimination but you, the manager, will have to deal with those prejudices. However, handled sensitively, the individual's transition should be unproblematic at the workplace.

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About the Checklist series

Your role as a line manager is important in delivering equality of opportunity in the workplace. To help you do this, the EOC has produced a series of Checklists aimed at line managers.

The checklists take you through typical situations, raising areas where problems could arise and giving guidance on how to handle the situation in the best interests of your staff and your organisation.

What is gender reassignment?

Transgenderism, transsexualism, gender dysphoria, or gender identity disorder is a medical condition affecting an estimated 10,000 people in the UK. In simple terms, it means that a person identifies with the sex other than that on their birth certificate.

The words used above to describe people can be confusing. To help understand the differences between these terms, the following definitions may be useful:

- **Transgendered** people are those that disguise their features using, for example, clothing that is usually associated with their chosen sex;
- **Transsexual** people are those who wish to change their body to completely resemble the sex they feel they belong to.

Some transgender people undergo medical treatment, which can include hormone therapy; some may elect to have reconstructive surgery; some never undergo medical treatment and simply live their life in their new sex. It is very much an individual choice.

In addition to the terms used above, there are two other associated terms – ‘changing social gender’ and ‘real life test’.

- **Changing ‘social gender’** is the process of a person presenting themselves permanently in their new sex, but have not undergone any medical or surgical changes.
- This changing of social gender is a crucial part of the transition process and is generally the time when the person starts to live full-time as a member of their chosen sex, with a new name and documents to reflect the gender change. The individual has to undergo this process as part of a **‘real life test’**, where they live in their chosen sex before any surgical intervention.

Your role and responsibilities as a line manager or supervisor

Managing an employee that has *gender dysphoria* can be difficult, not only for the individual concerned but for you.

As their manager, will need to ensure respect for the individual's dignity at work. You may need to manage the transition process with colleagues and customers who may have no understanding of the condition and who may confuse it with sexual deviancy.

Some of the issues relating to gender reassignment are of an administrative nature which will need to be dealt with by your HR department. But you, as their line manager, will be responsible for managing the day-to-day situation with the involvement of the person concerned.

- **It is important to respect confidentiality** if an individual has disclosed details of their previous identity to you – for example, in their references. Revealing information of this nature to others is an infringement of privacy and legal rights. Access to past records should therefore be restricted to staff who require the information.
- **If the employee you manage is to undergo the transition process**, you should discuss how to handle the process with them.
- **Get support.** Your HR manager can make the necessary arrangements regarding changes to personal records as well as advise you on handling other situations, such as dress codes. HR will also be able to give you support to help you manage the situation with your staff.
- **An employee who is undergoing**, or has undergone gender reassignment is likely to face prejudice, discrimination and harassment from other employees. As a manager, you will need to ensure that your staff adopt professional standards of behaviour at all times.
- **Where discrimination, prejudice and harassment arises**, such as name-calling, being ostracised and talked about, being asked about their private life, or being addressed in their old name, it should be dealt with in line with your organisation's policies and procedures or using the EOC's Checklist on Dealing with Harassment.

The law and gender reassignment

Under the Gender Recognition Act 2004, it is possible for somebody who meets the criteria laid down in the Act to obtain formal legal recognition for their change of gender. Once a full gender recognition certificate is issued to a person under the Act, that individual is entitled to be treated for all purposes as a person of their acquired gender. He or she can obtain a new birth certificate in their new gender (which will reflect any change of name).

The Sex Discrimination Act provides protection from direct and indirect discrimination, harassment and victimisation.

The discrimination legislation (the Sex Discrimination Act 1975) uses the term “gender reassignment” and refers to people who are “about to undergo, are undergoing or have undergone” gender reassignment - a medical process to reassign a person’s gender.

So, if an employer (via you, the manager, or people who answer to you) treats a transgendered person less favourably than other employees, that will be discrimination. In these cases, compensation can be awarded to the individual who is discriminated against and you could be liable in any legal action as well as the organisation you work for.

The law allows discrimination in favour of one sex in certain specified circumstances where there is a “genuine occupational requirement”, for example, where intimate searches are involved in a security job. However, employers are required to take reasonable steps to reallocate the duties concerned if possible.

In Elmes v Exeter District Council and Others (1996), Ms Elmes (a male to female transsexual person) was dismissed from her post of counsellor because her employers had become increasingly concerned about the feminisation of her appearance. She was awarded £30,740 – of which £13,967 was for injury to feelings – in compensation.

In Fortnum v Suffolk County Council (2000), Ms Fortnum (a male to female transsexual) was employed as an assistant day care officer who was required to give occasional intimate personal care to male and female day centre clients. In May 1999, the Council told Ms Fortnum that she could no longer continue to provide this intimate personal care to one of the female clients with learning difficulties whom she dealt with, as the client's mother had asked that her daughter only be cared for by female staff. The client and her mother were unaware of Ms Fortnum's gender reassignment, but the Council had taken the view that as Ms Fortnum was, at that time, a pre-operative, she was not a woman. The tribunal considered that the

Council's reliance on a genuine occupational qualification – that these services could not be provided effectively by someone undergoing gender reassignment – was problematic as Ms Fortnum had been providing these services effectively to the client for some time before being told not to do so. There was no evidence to show that the Council had addressed the issue of whether or not the service could be provided effectively by Ms Fortnum. Her claim was successful.

Supporting an employee to change gender

For managers, the most difficult situation that may arise in relation to gender reassignment is handling the situation when an existing employee is transitioning from one sex to another.

It is important that you discuss the issue with the employee concerned and get support from your HR department. It is also important to find out how the employee would prefer to handle the situation and agree the process.

The main issues for you and the employee to consider are:

- whether or not the employee wishes to stay in their current post or be redeployed elsewhere in the organisation;
 - the expected point of change of social gender, including change of name and personal details;
 - what amendments will be required to records and systems;
 - the expected timescale of medical and surgical procedures and what time off will be required;
 - when colleagues and clients should be informed and whether any training or education will be needed;
 - flexibility in dress codes;
 - the use of single sex facilities; and
 - handling any harassment, hostile reaction or unwanted media interest.
- **Informing colleagues, clients and the public.** The employee should be able to decide who makes the disclosure that they plan to change gender. You should agree when others are to be informed and who will tell them.
 - **If an employee decides that they will inform colleagues** and clients themselves, you need to know when they will do this and agree what you will do in order to support that difficult process
 - **Workforce education and training.** You will also need to assess the amount of education and/or training that will be needed among your staff. This should be discussed with the employee concerned and HR.

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- **Preparing to change social gender.** It may be useful to agree a period of absence from work for the employee at the point of change of social gender. If they take some time off work and return with their new name and gender role, you can use that time to brief those who need to know.
 - **Time off for medical reasons** can vary. It can involve two or three surgical procedures, although most procedures requires less than 2 weeks absence from work. However, in some cases, surgery is more likely to require two or three months.
 - **Sickness absence.** The employee is entitled to the same sickness absence and pay as other employees. However, be prepared to be more flexible – it may be possible to agree a combination of sick leave and unpaid leave.
 - **Any absence associated with changing gender** should not trigger your organisation's disciplinary procedure or any other procedure you would normally use to tackle persistent or high levels of absence.

Using single sex facilities

It needs to be agreed at what point the employee may use sanitary facilities such as toilets and changing rooms appropriate to their chosen sex.

This can be a difficult issue, as some people may object to the employee using their facilities when they knew the employee as their previous sex. However, employees have to accommodate the employee and respect that person's right to privacy and dignity.

- **'Real-life test'**. The transgendered employee has to undergo this process as part of their "real-life" – living their life in their new sex – before any surgical intervention. It would be difficult to do this if they are forced to use the toilet facilities of their birth sex, or indeed the disabled toilet facilities.
- **Change of 'social gender'**. You need to keep in mind that a change of 'social gender' – when a transgendered person presents permanently in their new sex, but are "pre-operative" – is a crucial part of the process of transition.
- **An appropriate time** for an employee to change their use of single sex facilities could be at some point during the change in the employee's 'social gender' when they present as the opposite sex. This needs to be discussed and agreed with the person concerned.
- **Communication, discussion and education.** Although it can be a difficult situation to manage, where employees object to sharing facilities with a person who intends undergoing gender reassignment, it needs to be dealt with through communication, discussion and education. You may need to use the normal sanctions and disciplinary procedures where employees fail to comply with a reasonable management requirement

Dress codes

You need to be prepared to be flexible on dress codes and to accommodate the transition from one sex to the other.

Issues such as who pays for a new uniform should be dealt with according to the employer's usual policy on replacement uniforms, for example, where a different size is needed.

Recruitment and selection

The process of recruitment and selection should not be affected by an individual's gender or transgender. The fact that a person is transgendered should be irrelevant to the process of recruiting and selecting. Allowing it to influence any aspect of the arrangements and decision-making process would be unlawful.

In Sheffield v Air Foyle Charter Airlines Ltd (1998), an employment tribunal found that the reason an applicant was not called for an interview as a pilot was her gender reassignment. She was awarded £70,000 compensation.

There are very few circumstances in which it is possible to restrict posts, for example where a job involves intimate searches. Even so, your employer has a responsibility to assess each situation carefully and act reasonably in the circumstances by considering alternatives, such as reassigning duties.

- **Disclosure.** It is up to the individual person to choose whether or not they disclose their status as a transgendered person, so managers should never ask this at interview.
- **References and qualifications.** Although this is an issue for HR, bear in mind that a transgendered person's references and qualifications may be in their former name. There is no obligation to disclose previous identity and where this is done for the purpose of references, strict confidentiality should be observed.
- **Records and confidentiality.** A transgendered person may change their name and official documents such as their driving licence, passport and medical card to reflect their new gender identity. In addition, they may want their employment records to reflect their new sex. However, their wishes regarding confidentiality should be observed.
- **For more details** on a fair and non-discriminatory recruitment, see the EOC checklist on recruitment and selection.

Additional notes for employers

It will help managers if there are a policies and procedures in place to deal with the issues arising in this checklists, so employees know what is expected of them, and your managers know how to deal with situations should they arise.

- **It is better to be clear and up front** about what is required of employees and managers in terms of professional behaviour and respect for individuals at work, as this may prevent situations arising in the first place.
- **Equal opportunities and diversity policies** should be amended to expressly include transgenderism as a ground upon which discrimination is prohibited.
- **Harassment.** An employee who is undergoing, or has undergone gender reassignment is likely to face prejudice from other employees, and harassment is commonplace. Your harassment policy should also include transgenderism as a ground upon which harassment is prohibited.
- **Workforce education and training.** You will need to assess the amount of education and/or training will be needed among your workforce. Education needs to take place on two levels: general information about transgenderism and specific information to enable people to understand the circumstances of the particular employee. The process could be made much easier if there is a policy in place already.

Sources of advice

ACAS

ACAS provides information, advice and training and works with employers and employees to solve problems and improve performance in the workplace.

Tel: 0845 747 4747

www.acas.org.uk

Equality Direct

Equality Direct is a confidential telephone advice service for employers, providing help on managing equality issues.

Tel: 0845 600 3444

www.acas.org.uk

Women and Equality Unit

The WEU has produced a practical guide to help employers understand how the relevant law applies, and how to deal with issues which may arise, when a job applicant or member of staff is a transsexual person.

*The Guide - **Gender Reassignment - A Guide for Employers** – is available on the WEU website at www.womenandequalityunit.gov.uk/legislation/*