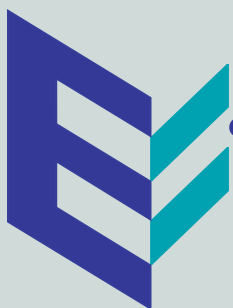



Employing TRANSSEXUAL PEOPLE in higher education

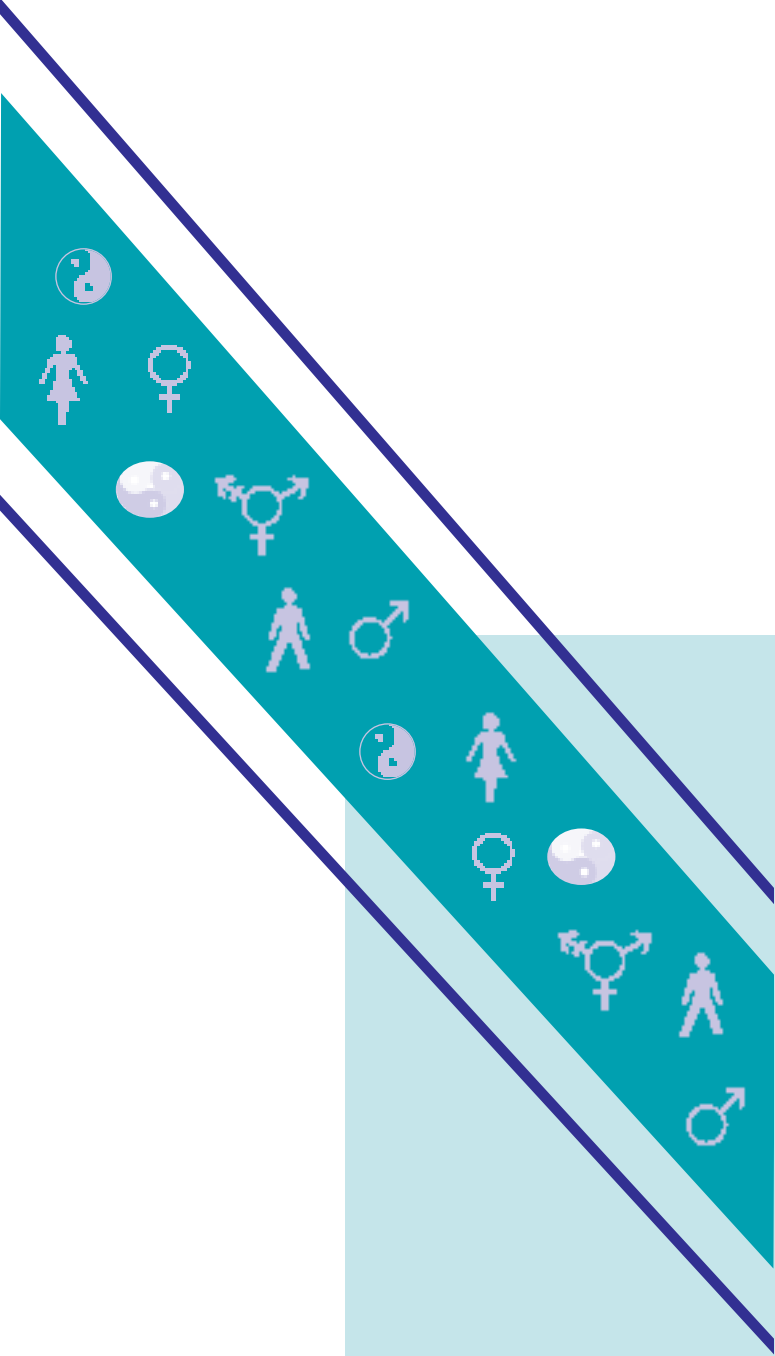
Guidance




equalitychallengeunit



Employing Transsexual People in Higher Education was written partly in response to the Gender Recognition Act 2004. The Act is applicable in Scotland, Wales, Northern Ireland and England. This guide is therefore relevant to all UK Higher Education Institutions.



Employing TRANSSEXUAL PEOPLE in higher education



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EMPLOYING TRANSEXUAL PEOPLE IN HIGHER EDUCATION GUIDANCE

Equality Challenge Unit

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For their contribution to these guidelines, the Equality Challenge Unit would like to thank all those members of the transsexual community who have provided comments and feedback, The FtM Support Group, the NATFHE equality team (Kate Heasman and David Renton), the Department for Constitutional Affairs and Judy Bennington at UCEA.

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Ministerial foreword

It is fundamental to an inclusive society that individuals and groups are given the rights to which they are legitimately entitled and, wherever possible, be allowed to live their lives as they determine. There is a strong tradition of legislation in this country that has sought to respond to the concerns and needs of minority groups, whether these be ethnic minorities, people that are disabled, and now transsexual people.

The Gender Recognition Act 2004 will mean, for the first time, that people who have taken decisive steps to live fully and permanently in their acquired gender are afforded all the rights and responsibilities appropriate to that gender.

I welcome these guidelines because they go beyond explaining the legal framework and offer practical advice on how institutions should deal with the very special circumstances that transsexual people are faced with.

Giving legal recognition to transsexual people is an important part of the Government's agenda for tackling social exclusion in all areas of society. The Gender Recognition Act will go some way to improving the lives of transsexual people. These guidelines will ensure that higher education institutions can play a role easing the already difficult lives of this small number of people.



Lord Filkin
Minister at the Department for Constitutional Affairs

Introduction

- 1 *Employing Transsexual People in Higher Education* provides a comprehensive guide for all managers and members of staff working in higher education institutions who employ people who have been diagnosed with gender dysphoria, or are in the process of changing gender, or live in a gender other than the one they were born with. The employer now has a legal responsibility to protect the rights of such a person. There is a responsibility to ensure that the person does not suffer from any direct or indirect discrimination, and that the employer supports the person in any process of transition.
- 2 Part A provides an explanation of the terms used in this document and how they should be used when supporting a transsexual person. It also explains the medical and theoretical reasoning concerning gender dysphoria and the transition that an individual must undergo in order to change gender. It then summarises the new legal obligations that an institution has to its transsexual staff. Part B provides a detailed analysis of how institutions can support staff at various stages in this process and makes recommendations for best practice.
- 3 This guidance is intended to answer any queries or difficulties that may arise with a member of staff who is transsexual. It is worth noting, however, that some people who transition from one gender to another do so with ease and without any difficulties, either personally or professionally.

Part One

Terms of reference

- 4 In order to understand the medical and legal implications of transsexual issues and the impact they have on an institution's equality agenda and employment practices, it is important to be aware of the variety of terms that come under the heading of transsexual. The following section provides explanations of the terms used throughout the publication.

Physical Sex

- 5 Sex as determined by the match between body and sex organs, i.e. male, female or intersex. Sex refers to someone's physical or anatomical sex – in other words, which type of genitals they possess. Except in very rare cases of people who are intersexed, anatomical sex is well defined and easy to interpret.

Gender

- 6 Expressed in terms of masculinity or femininity, gender describes how people feel about themselves and how they expect other people to behave towards them. The overwhelming majority of the population has a gender that accords with their anatomical sex, which is why it is sometimes difficult to understand that the two are different. Gender is less clearly defined than anatomical sex, and does not necessarily represent a simple binary choice: some people have a gender identity that is neither clearly female nor clearly male. Gender consists of two related aspects: **gender identity**, which is the person's internal perception and experience of their gender; and **gender role**, which is the way that the person lives in society and interacts with others, based on their gender identity. It should be noted, however, that for the purposes of the law, gender is binary – people can only be male or female.

Terms of reference

Gender Dysphoria

- 7 A person with gender dysphoria can experience anxiety, uncertainty, or persistently uncomfortable feelings about their birth gender. They may feel that they have a gender identity that is different from their anatomical sex. This in turn **may** lead to a fear of expressing their feelings and a fear of rejection, which **may** lead to deep anxiety, leading to chronic depression and possibly attempted suicide. Sometimes a person with gender dysphoria assumes an identity in the opposite sex. This may involve undergoing hormone and perhaps surgical treatment to change their sex physically, although medical treatment is not a prerequisite of transsexualism or of being recognised in the acquired gender.

Gender Recognition Certificate

- 8 A certificate issued by a Gender Recognition Panel. A holder of a full Gender Recognition Certificate (GRC) is legally recognised in his or her acquired gender for all purposes. This means that the person in question now belongs to the opposite gender in both a legal and social context. The GRC will be issued to an applicant if he or she satisfies the panel that they fulfil all the criteria outlined in the Gender Recognition Act 2004. The Act requires that the applicant has or has had gender dysphoria, has lived in the acquired gender for two years prior to the application, and intends to live permanently in the acquired gender. Since this is new legislation there is likely to be a delay before all those who are likely to be granted a GRC will receive one. A full GRC also gives the holder the means to obtain a new birth certificate.

Hermaphroditism or Intersexuality

- 9 Hermaphroditism or Intersexuality occurs when the anatomical sex is ambiguous. It may or may not be accompanied by various degrees of gender dysphoria. The condition may arise due to certain congenital disorders or hormone imbalances in the

foetus or placenta. Intersexuality means having some of the same physical characteristics of both sexes, but these are generally secondary characteristics. Intersexuality is rare: it means having both a penis and one or more ovaries.

Sexual Orientation

- 10 An orientation towards persons of the same sex (lesbians and gay men) or an orientation towards a person of the opposite sex (heterosexual) or an orientation towards persons of the same sex and the opposite sex (bisexual). The concept of sexual orientation is frequently allied with transsexual issues (often abbreviated to LGBT). Transsexual people, however, can be heterosexual, lesbian, gay or bisexual.

Transsexual person

- 11 A person who feels a consistent and overwhelming desire to transition and fulfil their life as a member of the opposite sex. Someone in this position will have the medical condition gender dysphoria.

Transvestite

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

Transgender

- 13 An umbrella term used to include transsexual people, transvestites, and those with gender dysphoria.

Trans

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

Terms of reference

FtM

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

MtF

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

Part Two

The medical and theoretical explanation of transsexualism

- 17 Part Two describes the nature of transsexualism, its diagnosis, its treatment and its outcomes. In order to recognise how best to assist and support a transsexual member of staff, it is useful to understand the medical framework. This medical model is perceived by some transsexual people to be outdated and discriminatory (for example, a medical model was used to 'diagnose' homosexuality). At present, however, it forms the framework for the majority of transitions, and is the basis of understanding for medical professionals.
- 18 Transsexualism is a physical as well as a psychological condition. It is not a matter of choice or environment (something which can be 'cured' by counselling), but is instead a medical condition. The first stage of diagnosis involves a visit to a General Practitioner or psychiatrist. The GP or psychiatrist will undertake a detailed enquiry into gender development in childhood and puberty. They will also note details of the person's current life circumstances and general stability before carrying out psychological assessments. There is sometimes evidence of clinically significant long-term anxiety, distress and impairment in social and occupational functioning, or there may be evidence of a deep dissatisfaction with the individual's gender identity. If the person is diagnosed with gender dysphoria, they are referred to a gender dysphoria clinic.
- 19 At this stage, alternatives to sex reassignment are considered and the person is given a range of options together with their implications. Many people will choose to live in the gender role with which they most closely identify. This may involve counselling, speech therapy, electrolysis (removal of facial hair) or hormone treatments. Hormone treatments can play an important role in the anatomical and psychological gender

Medical and theoretical explanation

transition process. Some people choose to stop at this stage of transition. They may either realise that they do not feel these changes are making a positive difference, or they feel that these changes are sufficient.

- 20 In some cases, the person may choose to undergo sex reassignment surgery. For a male becoming female, following hormonal treatment, the testes and erectile tissue of the penis are removed under general anaesthetic. An artificial vagina is created and lined with skin from the penis. Tissues from the scrotum (the sac that contains the testes) are then used to create the labia, and the urethra (urine tube) is shortened and positioned. This is one of the surgical options; there are several others.
- 21 For the female to male patient, the male hormone, testosterone, is taken by injection, gel, or patch. It produces largely irreversible effects of beard growth and masculine muscle development, as well as a deepening of the voice. A mastectomy may then follow and the ovaries may be surgically removed. A person may then undergo a hysterectomy. Penis construction, artificial testes implants and operations to create a male urethra and relocation of the clitoris to the head of the penis are available, but the surgery is complex and costly.

Part Three

The legal framework and the impact this has on employment in a higher education institution

- 22 The process of gender re-assignment can take several years to complete. There are different legislative protections at each stage of the process.

The Sex Discrimination (Gender Reassignment) Regulations 1999

- 23 These regulations extended the Sex Discrimination Act (1975) to cover discrimination on grounds of gender reassignment in employment and vocational training. Vocational training, in this case, includes all higher education students.
- 24 Any reference to discrimination in employment against men or women in parts II and III of the Sex Discrimination Act (1975) also applies to individuals who have gender dysphoria. A claim, therefore, can be brought against an employer or individual person for any unlawful discrimination, including harassment.
- 25 The Sex Discrimination (Gender Reassignment) Regulations 1999 cover only direct discrimination. It is unlawful to discriminate against a person in an employment context or vocational training context on the grounds that s/he person intends to undergo gender reassignment, or is undergoing gender reassignment, or has at some time in the past undergone gender reassignment.
- 26 Throughout the various stages of the gender reassignment process, including the very initial stage (where an individual indicates that they have gender dysphoria), a person is covered by the Regulations.

The legal framework

- 27 This means that persons who have gender dysphoria and intend to undergo gender reassignment should be treated in exactly the same way as any other member of staff. Unfavourable treatment means treating a person less favourably on the grounds of their gender reassignment than one treats, or would treat, a person for whom no gender reassignment grounds exist. This also applies to recruitment, unless a **Genuine Occupational Qualification** exists.

Genuine Occupational Qualification

- 28 In the vast majority of cases, the gender of a person is of no relevance to their ability to do their job in a higher education institution. However, the Regulations establish an exception relating to gender reassignment which corresponds to the existing categories of the Sex Discrimination Act: certain specified posts are exempted under the Sex Discrimination Act 1975 as amended by the Sex Discrimination (Gender Reassignment) Regulations 1999 and are only open to a single sex. For example, a job may involve the holder conducting intimate searches in accordance with statutory powers such as the Police and Criminal Evidence Act. In this situation, the gender of the employee is significant. Or, a job may involve the holder working in a private home and the employer can make a reasonable objection against a transsexual person being employed because the role involves intimate contact. In these circumstances, a person is only considered to belong legally to their acquired gender when they have fully transitioned and received a GRC.
- 29 These qualifications apart, it would be good practice to ensure that transsexual people are treated as being of the gender they identify with rather than their legal sex. The point of change of social gender is generally the appropriate indication that the transsexual person is now of their acquired gender. It is unacceptable to treat a person as belonging to neither one sex nor the other for employment purposes, either for a period of

time or for life. If a member of staff has indicated that they have gender dysphoria and therefore now wish to self-define as a man (although anatomically a woman) or a woman (although anatomically a man), the institution should consider that the person belongs to the acquired gender. This should not cause many problems within a higher education institution, as there are very few Genuine Occupational Qualifications in HEIs.

- 30 In the rare circumstances where there is a Genuine Occupational Qualification in institutions, it is essential that the institution and the person talk frankly and honestly about this situation as soon as possible. Prior to (or concurrent with) a change of social gender it might be beneficial for the individual (with their trade union representative if required) and the HEI to discuss redeployment. This would be applicable, for example, if the person worked in single sex accommodation facilities, or a single sex college or institution.
- 31 A Genuine Occupational Qualification may also arise if a member of staff (or student) has to work, practise, or study within the NHS. The NHS does not have a standard policy on this matter, but resolves issues on a case-by-case basis. Institutions should aim to mediate and find solutions between the individual and the Trust. Advice can be sought from the NHS Positively Diverse Office, the details of which can be found in Section C.
- 32 HEIs should ensure that in these circumstances options are discussed as soon as possible in order to come to a mutually satisfactory arrangement. If an institution does offer employment that is affected by a Genuine Occupational Qualification, it would be useful for both the institution and individuals if a policy on this matter could be agreed in advance, in discussion with the trade unions.

The legal framework

Disability Discrimination Act (1995)

33 In certain cases, a person with gender dysphoria may experience fear, uncertainty, or persistently uncomfortable feelings about their birth gender. This may also lead to anxiety and depression. There is often a long delay between the diagnosis of gender dysphoria and treatment.

“I am very depressed. I have lost all my motivation, and I never want to go out any more. I hate being a man and it doesn’t help that everyone in work thinks I’m gay. And it takes so long to fully transition. I’m on NHS waiting lists.”

34 Although no case has ever been brought under the Disability Discrimination Act (1995), a person who has gender dysphoria could be protected under this legislation. The Disability Discrimination Act defines a disability as a physical or mental impairment which has a substantial and long-term (that is, for more than a year) adverse effect on a person’s ability to carry out normal day to day activities. A person may have diagnosed gender dysphoria for over a year before receiving any treatment. Although there is no legal precedent, it would be best practice for the institution to make reasonable adjustments for a person in this position. This can include adjusting working hours if necessary and allowing the person to be absent during normal working hours for rehabilitation, assessment or treatment.

The Gender Recognition Act (2004)

- 35 The legal protection for a person who has fully transitioned is clear and unequivocal. The Gender Recognition Act (2004) allows transsexual people who are able to satisfy the Act's evidence requirements to apply to Gender Recognition Panels, (a new body consisting of judicially trained lawyers and doctors), to seek full legal recognition. The process applies the following requirements to the applicant:
- (a) s/he has, or has had gender dysphoria;
 - (b) s/he has lived in the acquired gender for two years ending with the date on which the application is made;
 - (c) s/he intends to continue to live in the acquired gender until death;
 - (d) s/he complies with the requirements imposed by section 2 (which are formal evidence requirements) or with any requirements imposed by the Panel under section 2 (which is any further additional evidence required by the Panel).
- 36 If successful, a full Gender Recognition Certificate is issued to the applicant, unless the person is married. The person will be automatically entered on the Gender Recognition Register held by the Registrar General and their original birth register entry will be marked, confidentially, to indicate that they have become recognised in their acquired gender. The Gender Recognition Register will not be open to search by the public and the disclosure of information contained in the Register is prohibited. There are certain exemptions from this prohibition for reasons of public policy; for example, if it is necessary to the prevention or detection of crime.
- 37 If their birth was registered in the UK, the person will be able to obtain a new birth certificate which does not disclose the fact that they changed gender. The effect will be just as if they had always been of their acquired gender. Thereafter, the Sex Discrimination Act applies to this person in the same way as it

General best practice

would to anyone else. In common with all other members of staff, the person should be able to work with dignity and respect, and their transition should not be a matter for discussion. The employer should ensure that all documents, public references (such as telephone directories, prospectuses, web biographies) and employment details reflect the acquired gender of the person. This will prevent any future breach of confidentiality. In addition, the disclosure of certain 'protected information' as defined by the Gender Recognition Act may breach the law.

- 38 Individuals who are married are not able to receive a full GRC. This is because marriage is not permitted between two members of the same sex. They may, however, apply to a Gender Recognition Panel and, if successful, will receive an interim GRC. This enables them to obtain a full GRC after their marriage is annulled, and provides a new ground for annulment to ease the process. Consequently, in terms of employment it would be best practice to treat this person as if they had received a full GRC.

Part Four

General best practice

39 There is increasing public awareness of transsexual issues, yet if a member of staff (or potential member of staff) is transsexual, there may be an element of anxiety about how immediate colleagues and the human resources department will respond. There is still a good deal of confusion regarding the employment rights of transsexual staff, both amongst employees (including transsexual persons) and employers. It is therefore best practice for all managers and the human resources department to understand the law and its implications, and to become familiar with transsexual issues. Failure to do so can have the following consequences:

- A current member of staff may feel that they cannot transition, despite being deeply unhappy in their current gender.
- A current member of staff may feel that they have to leave the institution (without requesting references) and make a fresh start somewhere else.
- A potential member of staff who has transitioned may be concerned that, if the employer discovers that they were once of the opposite gender, they will be discriminated against. This can lead to anxiety and poor performance at interview.

“I transitioned just over two years ago (whilst I was at university) and have spent the last seven months unemployed and becoming more and more demoralised. I don’t know how to handle interviews, or sell myself, and get really anxious about negotiating benefits.”

- A potential member of staff who plans to transition may not think that the institution is committed to equal opportunities for transsexual staff and may therefore turn down any job offered.

General best practice

“I know that these days employers are more accountable to job interviewees than has been the case in the past. There are various safeguards but I have no doubt that some employers will still discriminate against some groups when deciding who to invite for an interview and who, if a large number of people apply for a particular vacancy, to sift out at the initial stages. I, however, assume that I am going to be discriminated against merely because of who I am, but this immediately puts me at a disadvantage and, to some extent, I end up presenting a negative attitude to an interviewing panel.”

- Any potential member of staff, regardless of their gender identity, may see an omission of this topic from general equal opportunities policies, as an indication that an institution is not committed to equality and diversity.

“When applying for a job, I always find out what the institution’s policies are. This is not easily done because few have actually formally addressed the issue. You can get some idea of the reception you’ll receive by paying attention to any sex harassment training they may provide or require but it’s not an ideal way of checking a place out.”

- 40 There are several steps that can be taken that indicate that the institution is supportive of transsexual staff.
- 41 An equal opportunities statement that refers to discrimination on the grounds of sex automatically includes provision for transsexualism. It is good practice, however, for an institution to be explicit about discrimination on these grounds. Although an institution may not have any transsexual staff, it is beneficial to incorporate discrimination on the grounds of gender identity into the Equal Opportunities Policy of the institution.

- 42 For example, in the statement below, the phrase ‘gender identity’ refers to any transsexual person:

“No applicant for admission as a student, or for a staff appointment, or actual student, or member of staff will be treated less favourably than another on the grounds of sex, marital or parental status, race, ethnic or national origin, colour, disability, sexual orientation, gender identity, religion, age, or any other inappropriate distinction.”

- 43 It is advisable to check other policies to ensure that they adequately cover a transsexual person. Particular attention should be paid to those dealing with confidentiality, harassment, family issues, and access to development opportunities (such as training, secondment, internal job vacancies), promotions, pensions and insurance.
- 44 It is good practice to examine recruitment procedures. If formal documents are required before commencing employment, institutions should emphasise their confidentiality policy when asking for a birth certificate. This document makes it clear that the person was born with a different name (and gender) if a person has not yet received a GRC, or has not yet been issued with new identification. The same situation would arise if another country, not having the same legislative provision as the UK, has issued a passport. A P60 or P45 can be amended to reflect the new name and is therefore more discreet.

“I applied to a temping agency that serves my local university but they insisted that I take a passport or driver’s licence with me. I haven’t received a new one yet (though I’m on the waiting list). I’ve got a P60 that should suffice, but I don’t want to make a fuss.”

General best practice

- 45 A demonstration that consideration has been given to the needs of transsexual persons will indicate to staff and potential staff that an institution will not ostracise, dismiss, or fail to employ a member of staff who has undergone, is undergoing, or intends to undergo gender reassignment.

Occupational Pensions

- 46 The main issue regarding occupational schemes is that of death benefits. **Almost** all occupational schemes offer both a death in service lump sum and a dependant's benefit. The definition of dependant will vary from scheme to scheme according to its rules. A person who has had their marriage annulled to receive a full GRC will have to review their pension arrangements.
- 47 However, everyone in the scheme should be aware of access to the death in service benefit. This should be able to be paid to anyone, without proof of dependence being required. It is therefore important that persons complete their Expression of Wish forms (or the equivalent depending on the scheme), which – in the event of death – inform the trustees of the member's wishes. These forms are kept unopened unless the person dies, so members need not have concerns about confidentiality. Institutions should be explicit that these forms are confidential.

Part Five

Supporting a member of staff who has gender dysphoria and is transitioning

“I’m sick of living a lie at work – everybody knows me as she. I’m looking for jobs in Scotland and I’m just going to commute every day. I want to go to work wearing my shirt and tie and I know I’ll get a lot of nastiness at this place. It’s been brewing even when I wear a simple shirt. So Scotland here I come! As soon as possible!”

- 48 A member of staff who has been diagnosed with gender dysphoria may think that it is best to leave their present employment, transition, and start their career elsewhere. If institutions include transsexual staff in their equal opportunities policies and implement these, this will be less likely. Gender dysphoria is a highly personal and complex condition and it requires a lot of confidence in employers and an unequivocal faith in an institution’s commitment to equal opportunities for someone to feel comfortable when transitioning. An employee could discuss their situation with their trade union, as all trade unions should have a policy on this matter. A transsexual person may wish to be helpful and proactive in establishing good working practices for the institution, and this should be encouraged and supportive.

“I was going to change jobs in order to transition because I find work awkward. But then I got to thinking, if I have to put up with this rubbish, as a member of the academic staff, then there must be others in less fortunate work positions that aren’t being represented or protected. So I figured that I would speak to my head of department about being a representative of the LGBT community for our university, to represent other members of the LGBT community as a 100% anonymous source, just by being someone that they can pop in and ask advice or just talk to on/off the record.”

Support during transition

- 49 Although not ideal because transsexual people have different needs from LGB colleagues, support groups for LGB staff can be extended to support transsexual staff, or an equality official can be responsible for supporting a member of staff with gender dysphoria. Establishing these provisions can help ensure that staff in the present and future feel adequately supported and are less likely to leave the institution.
- 50 A person who is comfortable about transitioning at the same place of employment should inform his/her employer as soon as possible. This may be via the human resources department, the equal opportunities office, or they may raise the matter directly with their manager. Ideally, the institution should know three months before a person intends to live in another gender, though it would be good practice to be flexible about this requirement.

“I just had my meeting with Human Resources. It went very well. The head of HR was very sympathetic and supportive. Her first words were, ‘What can we do to make this work for you?’. And she assured me that my continued employment is not in jeopardy. The university bases employment on a person’s ability to do their job.”

- 51 A transsexual person will be keen to convince management that they are serious about their gender dysphoria and that the decision to change sex has been taken over a long period of time. A member of staff who wishes to transition is advised by support organisations to write a letter to his/her employer stating the date that they intend to present themselves as a member of the opposite sex. Alternatively, the person may choose to arrange a meeting with someone from the equal opportunities department, human resources, or management. The employee may wish to be accompanied by their trade union representative.

- 52 The primary recipient of the letter or the member of the institution first approached should initially meet with the person and offer reassurances that the institution will do everything to support them during their transition. The next stage is to arrange a larger meeting that should include the person's manager and, if wanted, a member of the human resources team, a member of the equal opportunities team, a trade union representative, and perhaps a bullying and harassment adviser. Before this meeting convenes, all those invited should be sent information about transsexual issues (this publication for example), and a covering note explaining the intentions of the person. There also should be a clear statement of confidentiality which emphasises the importance of not discussing the transition of the person with any other member of the institution.

“With all the support I have from management and HR, I am no longer nervous. I am just happy to be getting this over with so that I can go on with my life.”

- 53 It will be necessary to discuss the timetable that the person wishes to follow in their transition. This will include the date for an announcement to the rest of the department or section, and the date when the person wants to make the social change. The initial meeting will also include the dates of appointments that the member of staff has with doctors and specialists and the time when the person intends to start taking hormones. It may also include a provisional date for surgery, if the person intends to undertake this. This will enable employers to ascertain any necessary arrangements for leave.

Support during transition

“My university has not encountered anyone who is transgender before, so I’m setting the agenda slightly. I raised my own concerns about disclosure, timing of transition, use of toilets, name change, email accounts, etc. I also offered to provide them with informational resources when and if they need them. It is clear, though, that the primary concern is to ensure that I maintain as much privacy and comfort as I require, that we can work through this adjustment together.”

- 54 The meeting should cover the practical consequences of transitioning. The first issue is that of toilets. Transsexual persons have the same rights as everyone else, and this includes use of a toilet. It is general best practice that a transsexual person should be able to use the toilet that reflects their current gender presentation. This should not happen suddenly but after the announcement to the rest of the department or section.

“One of the main concerns they've expressed is the toilet arrangement. They really don't like the fact that they might have to share the bathroom with a transsexual. They still refer to me using masculine pronouns (or even 'it'), and they don't want to accept any transsexual as a woman. Most of the office seems to consider me a freak, and they don't mind saying so, in private.”

- 55 If there are objections from other members of staff and the matter cannot be resolved in any other way, it is best to negotiate with the transsexual person to find an alternative solution. Although not ideal, it may be possible to use the unisex accessible toilet, though this could be perceived to be discriminatory. Disabled staff may also object to the arrangement.
- 56 The second issue relates to identification passes, library cards, contact details, email addresses, formal records, and website references. All personal records should be amended to reflect

the individual's chosen gender. Records include personal file, sickness management file, and progression file. The pay roll will also have to be changed, but the office should first check with the individual that they have made a similar change with their bank. All records held in a paper file must be found and relevant information transferred to a new cover. Nothing should remain on the file which would disclose to a third person that a change has occurred. All material that cannot be disposed of should be placed in a sealed envelope and attached to the new file with the instruction 'Confidential, Personnel Manager Only'.

- 57 In order for these changes to take place, it is necessary to discuss the fact that a person is transitioning with others in the institution. However, it is essential that the person grants permission before their status is discussed with others.

Confidentiality

- 58 Generally, best practices in implementing equality of opportunity encourage institutions to support all staff and create an environment that celebrates diversity, respects the privacy of the individual, and facilitates independence. A transsexual person may, however, require a level of support that is determined by the needs of the individual. It is thus necessary for the employer to discuss in detail the plans and intentions of the person, and it will be necessary to hold discussions with others in the institution. The transsexual person will eventually want to come to work in their new gender role.
- 59 Before this stage is reached, it will be necessary to brief the immediate work colleagues of the employee. Line managers will need to consider how best to achieve this briefing **in consultation with the transsexual person**. Such a briefing may be undertaken orally by the manager or via a written statement. Alternatively, the person concerned might prefer to discuss it with their colleagues on a one-to-one basis. Whichever approach is adopted, managers will have to ensure

Support during transition

that sufficient information is available to help the wider workforce understand what is involved for the transsexual person concerned and what colleagues can do to help and support them. The person's transitioning status can be discussed with others (such as those responsible for directories, the public relations office), but only with explicit permission from the person concerned. Full consent should always be obtained from the member of staff in question.

Part Six

Discussing transition with other members of staff

60 Transitioning persons, as they move outside the legal standards for membership of one gender and begin to satisfy the legal standards for membership of another, often cannot avoid challenging community standards about what is gender-appropriate self-identification, appearance or expression. Consequently, transitioning persons may in turn face a broad range of challenges in the workplace. Employers who are supporting a transsexual member of staff and managing the reactions of their co-workers may have no idea how to respond to these challenges. The transsexual employee may want to tell members of the department or faculty about the impending transition individually.

“I have not generally had a problem. What I have found is that people just do not understand. And I enjoy taking time to explain. I have developed a good story now to explain why I am transgender and because my talent is speaking I have learned how to present this story interactively and entertainingly. I make jokes about myself and will not get offended by comments that are clearly born out of ignorance – I will address them and question them.”

61 In agreement with the person, however, it is good practice to arrange a meeting with the department or faculty. Everyone that the person works with or interacts with often at work should be present, if this group is not too large. It is best not to discuss transition via email, although a letter (and this publication) could be circulated at the meeting. The individual should be free to choose whether they make an announcement themselves, or whether it is made for them by their trade union representative or by management. It is important that a manager is seen to be

Discussing transition

supportive. It would be good practice for the manager to make it clear that the person who is transitioning is a valuable person and that s/he has the support of the department. The manager should also explain and reiterate the institution's commitment to equal opportunities, and its policy on bullying and harassment. The manager should emphasise that, on a pre-determined day, the person will have changed gender and should be addressed with their new name and with appropriate pronouns.

"I can see how it is quite difficult for other people. One day they are dealing with a man – the next day they have to try to shift gear and treat you as a woman and that is quite difficult."

- 62 There should be an opportunity for other members of staff to ask questions, either of the person hosting the meeting or, if they are comfortable, the person concerned.

Part Seven

The day of transition

- 63 On the day of transition managers should ensure that everything is in place to avoid any contradictory information. Staff lists, organisational charts, databases etc, should all be updated and circulated – omission or contradiction can be embarrassing. The person should receive a new form of identification and, if relevant, a new door sign.
- 64 If there are any informal social groups, it is important that these are inclusive. Work will return to normal quickly, but other members of a team may be interested and curious about the person's new identity.

“Today I started my first day at work as Sarah and so far I couldn't have asked for a better response. Everyone in the department has made the effort to use my new name and the correct pronouns. I received a supportive e-mail from one of the secretaries here. Early this morning the senior lecturer and then the head of the faculty came in to welcome me back, wish me luck and to let me know that if I have any issues to see them. The department representative for Human Resources also called to welcome me back and make sure that everything is OK. He also said he will set up my getting a new library (identification) card. I've also been informed that our IT group will establish a second e-mail account for me, so that I don't lose any e-mail while making this transition.”

- 65 In order for the transsexual person to receive treatment for gender dysphoria, they must 'live in role' for a period of time. Due to extensive waiting lists and limited resources, it can take several years for someone to achieve their optimum level of transition. It is therefore possible that staff will be able to tell that the person is transsexual. This should be handled with tact,

The day of transition

decorum and respect. If the person is ready to transition socially, this decision should be respected.

“I made it through my first day at work as a man. It was a bit of an anti-climax – basically a normal day at work. I did get a few weird looks and a few visits from people, but I also did my usual work. However, the day went by without the usual sense of dread and depression that I ordinarily feel on Monday mornings. I even got out of bed on time for once!”

Part Eight

Post social transition support

66 As previously noted, it can take several years to transition fully to the opposite gender. In order to receive a GRC, the individual must have “lived in the acquired gender throughout the period of two years ending with the date on which the application [for the certificate] is made”, which means that from the day a person first attends work in the opposite gender, the process of full transition (which does not necessarily have to include surgery) can take at least a further two years. During this time, the transsexual person will change. These changes depend on the nature of the transition, but there may well be further physical changes. The full transition will not be instantaneous and therefore it may be necessary to update photographic identification throughout this period.

“I think they thought that a magic wand would be waved and suddenly Susan would become Simon. It takes a long time to transition from female to male. They seem to think that I am a lesbian and treat me as such rather than treat me like a man.”

67 Transsexual people who decide to undergo medical and/or surgical procedures relating to gender reassignment may require some time off work. Assessment by a qualified professional may take several months or years and appointments may involve the individual travelling long distances, and so are likely to be at least a day in duration each time. Following this stage, there is typically a further period of one or more years before the individual is accepted for reconstructive surgery.

Post social transition support

“I was supposed to see the new doctor on Monday. I had to take a half-day off from work to make the appointment. I was hoping that this would be the day I'd finally get started on HRT. When I got there I was told the doctor had an emergency and that they had to cancel my appointment. The soonest I can get another appointment is three weeks later. Talk about a let down.”

- 68 The time required to undergo and recuperate from surgical treatment will vary greatly, from one week to around twelve weeks, depending on the nature of the surgery undertaken. HEIs should ensure that adequate time off is given and that it is distinct from other sickness leave. Persons undergoing gender reassignment are entitled to the same amount of paid sick leave as other staff, but consideration should be given to the provision of additional leave. The medical procedures are not optional or cosmetic. They are essential responses to the medical condition of gender dysphoria. Higher education institutions should be supportive and sympathetic during this period.

“Things at work continue to go smoothly. At home they continue to be an emotional roller coaster.”

- 69 It is likely that if the institution has been supportive, the person will be happier at work. Secrecy and tension can have a detrimental effect on an individual's performance and if s/he can be open, they are likely to work more effectively. Negotiation and co-operation are essential pre-requisites for a smooth transition period. It is good practice, however, to respect the transition point determined by the person, regardless of the stage of medical transition. Medical intervention is not a prerequisite for living in an acquired gender.

Part Nine

The Gender Recognition Certificate

- 70 A Gender Recognition Panel considers applications from transsexual people and grants legal recognition of the acquired gender. From this point, the individual fully assumes the acquired gender. Any certificate or form of identification should be changed to reflect this. The person's gender becomes for all purposes the acquired gender from the date of the certificate. That certificate will entitle the successful applicant to a new birth certificate, which reflects their acquired gender. The state will not change any historical documents, but it would be good practice if higher education institutions were able to re-issue degree certificates (for example) as this will protect the future confidentiality of the transsexual person. It is also essential that references for an employee do not refer to the previous transsexual status of the person. This would constitute a major breach of confidentiality, and could be a criminal offence.
- 71 When a member of staff has transitioned, it is essential that other persons remember and respect that this is the case. Referring to a person by their previous name, or using the wrong pronouns, will reveal the status of the person and will constitute a breach of confidentiality. It is also worth noting that people may wish to transition but not want to apply for legal recognition. In this situation, the employee should be treated in the same way as someone who has received a GRC.
- 72 This official recognition means that the person is now legally entitled to have the same access to facilities, opportunities, and goods and services as any other person of their acquired gender. There is now no justification for excluding a person from certain groups (for example a Women's Networking Group) or use of appropriate toilets. As previously suggested, however, higher education institutions should strive to reach this position at the point of social change, rather than waiting for legal recognition of change.

Bullying, harassment and discrimination

Part Ten

Bullying, harassment and discrimination

“The discrimination is largely due to the fact that most people simply do not understand our condition. Their knowledge is derived from images portrayed in shows like Jerry Springer or the evil or comical transvestite characters in movies.”

- 73 Bullying, harassment and discrimination are common and generally expected by transsexual persons.
- 74 Discrimination is easy to identify and should not be tolerated in any institution, either by staff or students. Bullying, harassment and anti-discrimination policies will also protect the rights of the transsexual person to have dignity at work. However, existing policies should be reviewed to ensure that they are explicit. Examples of direct discrimination include:
- Refusing to promote a member of staff who is transsexual.
 - Refusing to support a member of staff who is transsexual.
 - Deliberately excluding a transsexual person from any work or work-related activity on the grounds of their gender orientation.
 - Dismissal of a transsexual person for reasons connected to their transition.
 - Verbally or physically threatening a transsexual person.
 - Sexual harassment of a transsexual person.

“They wanted me to show them what had happened. What I had had removed so to speak. I thought that was pushing co-operation a little far.”

- Revealing the transsexual status of a person to others, either by disclosing information to individuals or groups – in other words, outing someone.

“It wasn’t his fault. But it was my inaugural lecture and the head of the faculty introduced me. He kept using the male pronoun. Not once, but over and over again. The room was packed with the faculty and students. I think by the end of the introduction, no-one was in doubt that I used to be a man.”

- A refusal by employers to respect the transition framework of the person, that is, not respecting a transition because the employer thinks that the individual has not transitioned sufficiently to warrant change. An employer will not be able to claim ignorance or confusion about transsexual issues.

“The hardest thing about telling work is that they first would not believe me and then said that I could not be regarded as a man until I had undergone penis construction. I pointed out that I did not want to do this. Besides, it takes ages to get that. Then they said I could not be regarded as a man until I had taken hormones. But I have to start living in role before I can start receiving hormones. So, I was in a stupid position of dressing as a man but being called Mary. Didn’t really lend itself to smooth transition.”

- Deliberately treating an individual who has transitioned in a different way from how they used to be treated.

“Nothing is said to my face, but everyone feels a little bit awkward. I know they talk about me behind my back. The room goes quiet if I come in, and they don’t gossip with me anymore. I’m still capable of appreciating university politics just because I wear a skirt to work.”

Bullying, harrassment and discrimination

- Refusing to acknowledge the rights of a transsexual person and failing to acknowledge that a transition has actually occurred.

“A member of the Women’s Group openly refuses to accept that I am now a woman. She says that you are a woman because you have grown up as a girl in a patriarchal society. That being a seven-year-old girl and learning to cope with oppression is the essence of female. Well, being stuck in the wrong body was pretty oppressive as well.”

74. The key to ensuring that a transsexual person feels comfortable in their employment is to respect the choices and needs of the individual and recognise any form of discrimination or potential opportunities for discrimination.

Useful addresses, publications and websites

General UK Organisations

The Gender Trust

PO Box 3192
Brighton
BN1 3WR
www.gendertrust.org.uk

The Trust is recognised as an authoritative centre for professional people who encounter gender identity related issues in the course of their work. In particular this group includes employers, human resource officers, health workers and information services.

Press for Change

BM Network
London
WC1N 3XX
www.pfc.org.uk

Press for Change is a political lobbying and educational organisation, which campaigns to achieve equal civil rights and liberties for all transgender people in the United Kingdom through legislation and social change.

The Gender Identity and Research and Education Society

Melverly
The Warren
Ashtead
Surrey
KT21 2SP
www.gires.org.uk

GIRES initiates, promotes and supports research particularly to address the needs of those in whom there is a strong and ongoing desire to live and be accepted in the gender in which they identify, although different from that assigned at birth.

Addresses, publications and websites

NHS

Positively Diverse Office

<http://www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModelEmployer/EqualityAndDiversity/fs/en>

Maroline Lasebikan

Positively Diverse Programme Director

0788 447 3453

Legislation

Sex Discrimination Act

<http://www.eoc-law.org.uk/cseng/legislation/sda.pdf>

The Sex Discrimination (Gender Reassignment) Regulations 1999

<http://www.hmso.gov.uk/si/si1999/19991102.htm>

Genuine Occupational Qualification

http://www.eoc.org.uk/cseng/advice/the_law.asp

Disability Discrimination Act 1995

<http://www.hmso.gov.uk/acts/acts1995/1995050.htm>

The Gender Recognition Act (2004)

<http://www.dca.gov.uk/constitution/transsex/legs.htm>

All legislation on this subject can be easily accessed through the ECU website, www.ecu.ac.uk, where further information on equality and diversity issues is available.

Support for transsexual persons and further information

www.transgenderzone.com

An online resource that covers all aspects of transgender issues, including a section specifically for Female to Male transsexual people.

This publication can be downloaded from the ECU website (www.ecu.ac.uk) under Publications. For readers without access to the internet, we can also supply it on 3.5" disk or in large print. Please call 020 7520 7060 for alternative format versions.

The Equality Challenge Unit, 3rd Floor, 4 Tavistock Place, London, WC1H 9RA
Tel: 020 7520 7060 Fax: 020 7520 7069 info@ecu.ac.uk

Designed by Siân Cardy

Disability Legislation
