

# Gender reassignment is one of the protected characteristics within the Equality Act 2010

## Gender reassignment

Gender reassignment, the process of transitioning from one gender to another gender, is now a [protected characteristic](#).

Gender reassignment, and the issues transgender people can face may be unclear to staff. This guidance explains a little about gender reassignment and the support available for members of staff considering, or undergoing gender reassignment, and for their manager and colleagues.

The [Equality Act](#) provides protection for transgender people. A transgender 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 person who changes their gender but does not undergo any medical procedures would be covered.

## Definitions

A transgender person - is anyone who is living in a gender which was not their gender at birth.

Transgender people may, or may not have undergone gender reassignment treatment. A transsexual person - is anyone who desires to have, or has achieved, a different physical sex from that which they were assigned at birth. An issue of gender rather than sexuality. Transsexual and transgender people identify as heterosexual, gay and bisexual in roughly the same proportions as the wider population.

Gender identity - is the way in which an individual identifies with a gender category, for example as being either female or male.

Transphobia - the fear or hatred of people who are transgender.

## Assumptions

Assumptions are beliefs or ideas that we believe to be true - often with little or no evidence to support them. We all make assumptions, but they can often be misleading and based on inaccurate information. Stereotypes are based on our assumptions.

For example, believing that transgender people all have reassignment surgery is an incorrect assumption based on incorrect information.

## Stereotypes

Stereotypes are broad generalisations about groups of people - generalisations involving value judgments. If we say or imply that a group of people are good, bad, polite or rude we are stereotyping them. Stereotypes often form the basis of prejudice and are usually used to explain real or imaginary differences between groups of people.

For example, 'all transgender people are gay' is a stereotype.

## Prejudice

Prejudice is the process of 'pre-judging' something or someone. Prejudice involves forming a judgment or decision without direct experience or appropriate information. Prejudice is based on existing biases towards stereotypes and can result in negative behaviour.

For example, inappropriate language and bullying of transgender people are behaviours based on prejudice.

We aim to prevent any form of discrimination because a member of staff has undergone, or is undergoing gender reassignment by:

- setting a clear process in relation to absences resulting directly from the procedure of gender reassignment
- setting a clear process for the changes required when a member of staff goes through gender reassignment
- ensuring that confidentiality is appropriately maintained in connection with a member of staff's gender reassignment.

Discrimination or harassment because of gender reassignment will not be tolerated. A complaint on either of these grounds will be treated as seriously as any other complaint.

Example of gender identity direct discrimination

Maria is a receptionist at a local doctor's surgery. She holds strong religious beliefs and believes that being a transgender person is a sin. Based on her beliefs, she refuses to serve or speak to Christine, a transgender patient who arrives for an appointment at the surgery.

Protection from indirect discrimination has been extended to cover gender reassignment.

### Example of gender identity indirect discrimination

Eric, a transgender man, is due to attend a training event. In his pre-course information he is told to bring a photograph of himself as a child or young person to help delegates during one of the sessions. This type of practice could prove to be indirect discrimination as it could place a transgender person at a significant disadvantage.

Protection from discrimination by perception and association have also been extended to cover gender reassignment.

### Example of gender identity harassment

Diane, a transgender woman, reported the hostility she encountered when she began to use the female toilet and shower/changing facilities in her office. Diane became aware that her colleagues were discussing this at their desks, and when using the office printer she found a copy of an email discussion where a number of people had shared that they did not want her to be allowed to use shared facilities.

### Example of gender identify victimisation

Joanne, a transgender woman, raised a grievance against her employers on the basis of transgender discrimination. She left the company shortly afterwards. Joanne was then refused a reference from her previous employer because she had raised a grievance when working there.

We aim to prevent any form of discrimination because someone is undergoing gender reassignment.

## Gender reassignment definitions

Gender reassignment can be referred to as transsexualism which is a biologically inborn condition, also known as gender dysphoria, the causes of which are not yet clear. It causes an individual to identify with the gender opposite to the sex assigned to them at birth. Example: Someone who has been assigned as 'male' at birth, raised as a boy and lived their lives regarded by everyone as a man, may regard their true self (or 'gender identity') as more closely aligned with the female gender. A person assigned 'female' at birth may similarly identify with the male gender.

Depending on the degree of gender dysphoria, people with this condition find themselves inexorably driven to live in their acquired gender. Resistance to this drive, usually as a result of social pressures to conform to society's norms and expectations, frequently leads to intense anxiety, depression and suicide. The accepted way of relieving the condition is for the individual to 'transition' to the gender in which they feel comfortable.

Many transsexual people seek medical assistance to make their body conform with their gender identity through a variety of medical interventions, but this will vary from individual to individual. The process as a whole is referred to as 'gender reassignment', by which the body is reassigned to match the individual's gender identity.

## Confidentiality

We will not disclose if anyone is transsexual or that they are going through gender reassignment unless we obtain their written consent to do so. We will treat them no differently from any other member of staff.

You may want to tell your manager about your situation so that they can provide support, but your manager must not tell anyone else without your permission.

## Discrimination or harassment

We aim to prevent any form of discrimination because someone is undergoing gender reassignment by:

- setting a clear process in relation to absences resulting directly from the process of gender reassignment
- setting a clear process for the changes required when a person goes through gender reassignment
- ensuring that confidentiality is appropriately maintained in connection with an individual's gender reassignment.

We will not tolerate discrimination or harassment on the grounds of gender reassignment. A complaint on either of these grounds will be treated as seriously as any other complaint.

## Legal obligations

The main items of legislation covering gender reassignment are detailed below.

Act	The legislation
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**Equality Act  
2010**

Replaces similar provisions in the Sex Discrimination Act, 1975 as amended by the Sex Discrimination (Gender Reassignment) Regulations, 1999.

The Act aims to prevent discrimination (both indirect and direct) in relation to employment offers, terms and opportunities, against a person who proposes to, starts or has completed a process to change his or her gender (gender reassignment). It is not necessary for all three stages to apply for discrimination to have taken place. Under the Equality Act 2010 a person is no longer required to be under medical supervision in order to have the protected characteristic of gender reassignment.

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.

The Act also:

- protects someone from discrimination or harassment because:
  - they are perceived to be a transsexual person, even if this is not the case;
  - they associate with someone who is a transsexual person;
- protects a transsexual employee from harassment by a third party (for example by a service provider or stakeholder);
- protects employees from offensive behaviour (harassment), because of gender reassignment even if the behaviour was not directed at them (and they do not need to possess the 'protected characteristic' themselves);
- protects someone from victimisation -this is unfair treatment because they have made or supported a complaint or grievance under the Equality Act; or because they are suspected of doing so.

<p><b>Gender Recognition, Act 2004</b></p>	<p>Enables transsexual and transgender people to apply to the Gender Recognition Panel for legal recognition of their acquired gender. They will then be able to:</p> <ul style="list-style-type: none"> <li>• be given a gender recognition certificate that recognises the acquired gender and allows the individual to apply for a new birth certificate in that gender. (The original birth certificate is retained by the Registrar but is no longer publicly accessible);</li> <li>• obtain the right to marry in their acquired gender;</li> <li>• obtain social security benefits and pension according to their acquired gender;</li> <li>• prevent the disclosure of their gender history. The Act makes such disclosure a new criminal offence.</li> </ul> <p>Notwithstanding this Act, all transsexual people are entitled to the protection of the normal rules of confidentiality, irrespective of whether they hold a Gender Recognition Certificate.</p> <p>Transsexual people do not require a Gender Recognition Certificate to live in their acquired gender - the Act only confers legal recognition of that gender. Some transsexual people will not be able to gain this legal recognition.</p> <p>Example: They have lived less than two years in their acquired gender or they continue in a marriage that existed at the time of their gender transition. In such cases, the gender at birth will continue to apply for legal purposes, even though they are otherwise entitled to live their lives in their acquired gender.</p> <p>It is very important to ensure that there is no discrimination against transsexual people even though they do not hold a Gender Recognition Certificate.</p> <p>Data Protection Act, 1998 constitutes transsexual identity and gender reassignment as 'sensitive personal data' and must be processed as such.</p>
<p><b>Equality Act, 2006 and Gender Equality Duty</b></p>	<p>Amended the Sex Discrimination Act 1975, with effect from 6 April 2007, to place a statutory duty on all public authorities, when carrying out their functions, to have due regard to the need to:</p> <ul style="list-style-type: none"> <li>• eliminate unlawful discrimination and harassment because of sex including gender reassignment;</li> <li>• promote equality of opportunity between men and women.</li> </ul> <p>Discrimination because of sex includes discrimination because of gender reassignment in employment and vocational training. Public authorities are therefore legally required to include transsexual people within this Gender Equality Duty.</p> <p>This statutory duty continues to apply until the new Public Sector Equality Duty is in place.</p>

## **Employment policies and procedures**

In the context of employment policies and procedures, public authorities are required to ensure that they adequately cover transsexual employees. They must give particular attention to confidentiality, harassment, allocation of resources, recruitment, training, secondment, internal job vacancies, career development including promotion, pensions and other benefits.

Last modified 1 year ago