Transsexual and Transgender Issues

Overview

“Gender dysphoria is a recognised medical condition. Those who experience the condition do not feel, on the inside, to be of the gender that their bodies are perceived to be. Many...experience such intense and prolonged discomfort that...they undergo a process of gender role transition in which they express their innate gender identities and, usually, obtain medical treatment to modify their bodies accordingly. They...may be regarded as having the condition termed transsexualism.” (Whittle, 2002)

‘Transgender’ is a broader term and includes those who temporarily change their gender and appearance, as well as transsexual people. Transsexualism is not the same as, and should not be confused with, transvestism, cross-dressing or sexual orientation.

Medical treatment enabling transsexual people to alter their bodies to match their gender identity is highly successful. The process is known medically as ‘gender reassignment’ and may take some years. After about six months of hormone therapy, physical appearance begins to change; social gender can also be expected to change at around this stage (though usual gender roles may be maintained at work). Corrective surgery usually follows after one or two years of hormone therapy, although some, for financial, medical or other reasons, do not undergo surgery.

Once a person starts to live full time as a member of a new sex, their name and other records, such as examination certificates, can be changed. This period, during which you are expected to live and work (or be a student) in your new sex, is referred to as the ‘real life test’. Following the Gender Recognition Act 2004, individuals who satisfy the necessary evidential requirements, which include having lived in your acquired gender for at least two years, are allowed to apply for full legal recognition in their acquired gender. If successful, the law regards the applicant, for all purposes, as being of their acquired gender. For more information on gender recognition, contact the Gender Recognition Panel (www grp gov uk).

It is unlawful, under the Sex Discrimination (Gender Reassignment) Regulations 1999, to discriminate against people on the grounds of gender reassignment. However, the results of a Press For Change (www pfc org uk) survey compiled in 2000 showed that, for transsexual people, discrimination and harassment in the workplace is endemic: “The reality is that transsexual people are not given an equal footing with other employees, and many of them face discrimination and harassment on a regular basis” (Whittle, 2002). Of those who completed the survey, 38% reported that they were subject to harassment during their transition, 13% of whom encountered such behaviour on a daily basis. Even after transition, 25% still faced harassment, and not just by fellow employees; during transition, 18% faced harassment by non-company members, whilst after transition this figure dropped slightly to around 12.5%.

As well as harassment, transsexual people also face other obstacles. Although the 2000
survey suggests a dramatic decrease in the number of unemployed transsexual people during the period 1992-2000 (from 35% to 9%), this figure fails to take into account a further 8% who were claiming sickness or disability benefit due to the risks posed to their mental health that working in extremely stressful situations could cause. Taking this into account, the actual figure for economically inactive transsexual people in 2000 was 17%, compared to a national unemployment rate of 5.1%. During the same eight-year period, of the 208 people surveyed, 51% had changed employer, 62% of whom had changed because either their employer had forced them to leave (33%) or the conditions of employment were such that they were forced to leave (29%). In real terms, the survey suggested that only one in three changed their job through freedom of choice.

In light of recent legislation, the rise in successful legal action and a greater awareness of the rights of transsexual people in the workplace, it is clear that failure by employers and employees to eradicate such discrimination will have serious legal and economic implications. Although the situation has improved considerably since the Sex Discrimination (Gender Reassignment) Regulations have been applied, there still needs to be a wider understanding of the issues faced by transsexual people and a far greater commitment to tackling discrimination head on.

Understanding the law

“For the purposes of employment and vocational training, discrimination on grounds of gender reassignment constitutes discrimination on grounds of sex, and is contrary to the Sex Discrimination Act. Employers who breach the Sex Discrimination Act 1975 in respect of discrimination on gender reassignment grounds will be liable in the same manner they would, for example, for discrimination against a woman on grounds of sex.”

(A Guide to the Sex Discrimination (Gender Reassignment) Regulations 1999)

The current law protecting transsexual people in the workplace follows a ruling by the European Court of Justice that the dismissal of employees on the grounds of gender reassignment runs contrary to the European Equal Treatment Directive. The Sex Discrimination (Gender Reassignment) Regulations 1999 tightened the Sex Discrimination Act 1975 to protect transsexual people against discrimination in employment and vocational training (Northern Ireland is covered by similar regulations). Under these regulations, it is unlawful to discriminate against someone if he or she:

- intends to undergo gender reassignment;
- is undergoing gender reassignment;
- has undergone gender reassignment.

Legal protection begins from the time you make it known that you intend to undergo gender reassignment. If you suspect discrimination, you should make a complaint to an industrial tribunal within six weeks. You should, however, be aware that the regulations cover direct discrimination, which includes harassment and victimisation but not indirect discrimination.

These regulations also apply to recruitment unless a genuine occupational requirement (GOR) exists. For example, for jobs that have ‘single sex GORs’ (where the job has to be done by a person of a particular gender) it may be deemed reasonable to prevent a transsexual person from doing the job. However, these cases are limited and the onus of
proof is on the employer to show that such discrimination is reasonable (financial and organisational reasons do not necessarily constitute reasonable grounds for a GOR).

As well as GORs, there are also a limited number of circumstances where discrimination against transsexual people may not be unlawful. These include:

- jobs that involve physical searching, such as certain roles in the police;
- jobs in a private home where people might object to the close physical and social contact associated with the role;
- situations where there are genuine religious reasons.

There are also some limited temporary exceptions that only apply during the process of gender reassignment; for example, when individuals are required to share accommodation and it is deemed unreasonable to do so during the process of transition on grounds of privacy or decency.

However, under the Gender Recognition Act 2004, if an individual has a full gender recognition certificate, the only instance in which discrimination on the basis of gender reassignment is lawful is if there are genuine religious reasons.

Having satisfied the necessary evidential requirements set down by the Gender Recognition Panel, and applied successfully for full legal recognition in their acquired gender, an individual, from the date of recognition:

- acquires all the rights and responsibilities associated with their gender;
- is able to marry a person of the opposite gender;
- is eligible for the state retirement pension (and other benefits) at the age appropriate to the new gender;
- is able to apply for a new birth certificate in their acquired name and gender (if their birth has been registered in the UK).

In terms of medical treatment, although current legislation does not specify an allowed minimum or maximum time period for individuals to be absent from work, transsexual people should be considered in the same way as any other person who is medically unfit for work. In addition to this, individual rights relating to the Disability Discrimination Act 1995 must also be taken into consideration where the individual has been diagnosed as suffering from gender dysphoria or gender identity disorder.

**Finding positive employers**

“It has been shown by the experiences of many...employers from the very large...to the very small...to be possible to welcome and integrate transsexual people fully in the workplace. Further, it is cost-effective, avoiding not just potential legal fees but also retraining and hiring costs, as well as creating a happy and accepting workforce.”

(Whittle, 2002)

More and more companies and organisations are noticing the benefits of having a diverse workforce. A recent report by the European Commission shows that 62% of companies believe that equality and diversity policies facilitate staff development, aid
human resources recruitment and selection processes, and increase staff retention rates. Yet how many companies have the strategies in place to achieve diversity and how can they be identified?

Press For Change’s 2000 survey of transsexual people and employment showed a marked increase in the numbers of transsexuals working for public sector organisations after transition, suggesting that the equal opportunities policies adopted by these employers provide a more welcoming working environment. There is a long history of the public sector being at the forefront of improving equal opportunities with organisations such as local government, the civil service, educational institutions and the voluntary sector leading the way.

Larger commercial employers are also more likely to have explicit equal opportunities statements.

It is often assumed that equal opportunities policies that include sex discrimination automatically include gender but few specifically mention gender identity or reassignment. Explicit inclusion of transsexual and transgender issues shows that employers have considered these issues and have a commitment to increasing diversity.

Marketing yourself

Try to emphasise the positive effects of your experience and treatment. Your position is very different from that of a person with an ongoing problem with no identifiable source: you have received treatment, been assessed as mentally and socially stable, and demonstrated that you are able to cope with stressful situations. Emphasise how much happier you are and that you feel both mentally and physically well. Consider the positive qualities that you have as a result of your situation. Several employers, for example, have noted the particular qualities of empathy shown by female-to-male transsexuals working with clients with mental health difficulties.

Disclosure

There are a number of issues associated with disclosure, many of which are dependent on individual circumstances. Whilst some transsexual people wish to keep their transsexual status as private as possible, others are more willing to disclose the information – either confidentially or openly.

If you have changed over and are not yet in possession of a gender recognition certificate, and/or are at an androgynous stage, you will need to assess the extent to which you appear visibly transgendered. The decision about how much to disclose will depend on the degree to which you can pass in your new gender – for many people, no matter how much medical attention they receive, they will always be recognisable as a transsexual person.

You may decide to declare your status on your application form to forestall any embarrassment at interview. If you decide not to disclose at this stage and are having treatment, then you will still need to fill in and date medical forms honestly (your replies should be succinct and technical). You may also be examined by occupational health.
It is important to stress that there is no legal obligation to disclose (unless there is a genuine GOR related to the job). If you have not yet had any treatment, there is no obligation to disclose future possibilities and the best possible course of action is to say nothing until you have settled into a job, by which time your employer will be legally obliged not to discriminate.

If you have transitioned prior to joining an employer, under no circumstances is it appropriate for your employer to disclose any information about your transsexual history without first gaining your consent. Indeed, if you are in possession of a gender recognition certificate, it is a criminal offence to do so.

In terms of criminal record checks, the Criminal Records Bureau (CRB) has now devised a process whereby transsexual people can pass details to the CRB without first revealing them to an employer. This allows transsexual people to exclude previous names from the disclosure application form, instead sending details of any previous identities in a separate letter.

**Top tips**

- Target organisations with equal opportunities policies relating to transsexualism and gender reassignment.
- Be prepared to educate an employer about a situation that may be new to them.
- The attitude that you project about your status will be reflected in others’ reactions to you – be positive!
- Disclosure at an early stage may risk an employer seeing only the transsexualism, not your abilities.
- Transsexual people are not disabled, however, you may feel as though having this condition means that you face more difficulties in employment than others. This has been successfully argued by some people to access extra help in finding employment or training. Consider whether the definition of disability under the Disability Discrimination Act (DDA) 1995 and 2005 applies to you. The act forbids discrimination on the grounds of appearance. If you need to attend regular medical appointments then there may be disability issues.

**Sources of further advice and information**

**Contacts**

**The Gender Trust**  
PO Box 3192  
Brighton BN1 3WR  
Tel: 01273 234024  
[www.gendertrust.org.uk](http://www.gendertrust.org.uk)

Offers information and support to transsexual, gender dysphoric and transgender people.
Women and Equality Unit
1 Victoria St
London SW1H 0ET
Tel: 0207 215 5000
www.womenandequalityunit.gov.uk

The Gender Identity Research & Education Society (GIRES)
Melverly
The Warren
Ashtead
Surrey KT21 2SP
Tel: 01372 801554
www.gires.org.uk

The Beaumont Society
27 Old Gloucester St
London WC1N 3XX
www.beaumontsociety.org.uk/

As well as being a support network, the society promotes the better understanding of the conditions of gender dysphoria in society, creating and improving tolerance and acceptance of these conditions.

Gendys Network
BM GENDYS
London WC1N 3XX
www.gender.org.uk/gendys/index.htm

Network for all those who have encountered gender identity problems.

Press for Change
BM Network
London WC1N 3XX
www.pfc.org.uk

A political lobbying and educational organisation that campaigns to achieve equal civil rights and liberties for all transgender people in the UK through legislation and social change.

FTM Network
BM Network
London WC1N 3XX
www.ftm.org.uk

Information for female-to-male transgender and transsexual people.
Websites

Directgov
www.direct.gov.uk  click on ‘Disabled People’

Criminal Records Bureau (CRB)
www.crb.gov.uk

Gender Recognition Panel (GRP)
www.grp.gov.uk

Department for Constitutional Affairs
www.lcd.gov.uk

The Case of Christine Goodwin v The United Kingdom
www.pfc.org.uk/legal/gdwnvuk.htm

Publications

A Guide to the Sex Discrimination (Gender Reassignment) Regulations 1999 (Department for Trade and Industry)

Employment Discrimination and Transsexual People, Whittle (Gender Identity Research and Education Society, 2002)
Available from: www.gires.org.uk/Web_Page_Assets/Employment_Disc_Full_paper.htm

Gender Reassignment – A Guide for Employers (Department for Trade and Industry, 2005)


Respect and Equality: Transsexual and Transgender Rights, Whittle (Cavendish Publishing Ltd, 2002)

Acts/Regulations

Disability Discrimination Act 1995

Disability Discrimination Act 2005
Gender Recognition Act 2004

Sex Discrimination (Gender Reassignment) Regulations 1999

Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999