

Equality for Trans Teachers

Introduction

The NASUWT believes that all pupils/students and staff in schools and colleges have a right to learn and work in a safe and secure environment where they are treated with dignity and feel valued and respected.

This guidance aims to provide an overview of the law and to support employers of teachers to ensure their workplaces are trans-inclusive.

‘Trans’ is a term which identifies the spectrum of people who feel that the sex they were assigned at birth does not match with, or conform to, their own sense of who they are.

Many trans people wish to change their name and personal details and live as a member of the gender with which they identify. This may, although by no means always, involve hormone therapy and surgery. The process is referred to as ‘gender reassignment’ or ‘transitioning’.

It is important to recognise that it may not always be known when a trans person is working in a particular workplace. If someone transitions whilst on the staff then it will be known.

There could be people who know they are trans but have not come out, others who are questioning their gender, or people who transitioned some time ago and are not known. Being aware of this is also extremely important to ensure inclusion.

Legislation provides the minimum standard that should be expected in terms of equality. It is good practice for employers to focus not just on legal requirements but also the wider wellbeing of staff and how they can ensure a fully inclusive workplace.

The Law

Equality Act 2010 (specific duties) (Scotland) Regulations 2012

It is unlawful to discriminate against pupils, staff or members of the public on the grounds of gender reassignment.

A person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.

Provisions within the 2010 Act mean that employers must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity; and
- foster good relations.

As employees, teachers and other members of the workforce are legally protected from discrimination on the basis of:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief;
- sex;
- sexual orientation.

Employees should, therefore, be protected by their employer from any of the following actions:

- **direct discrimination** – acts of overt discrimination to a person’s detriment, such as denying them promotion on the basis of a protected characteristic;
- **indirect discrimination** – a discriminatory provision, criterion or characteristic, such as a promotion requirement or working pattern, that cannot be objectively justified;
- **harassment** – acts of unwanted conduct that threaten or violate a person’s dignity, such as making unreasonable demands or bullying;
- **victimisation** – particularly after making a complaint about discrimination or lodging a claim at an employment tribunal.

Religion or belief may not be used to discriminate against trans people.

The legislation makes clear that it is not necessary for people to have any medical diagnosis or treatment to gain gender reassignment protection; it is a personal process of changing gender expression (outward presentation of gender) from the gender they were assigned at birth to the gender they know themselves to be, or ‘self-identified gender’.

Employers can be held responsible for the actions of their staff under the Act, even if the actions are without the employers’ knowledge or approval. Employees are also individually responsible for their own discriminatory actions.

Schools and colleges are covered by the Public Sector Equality Duty. They must eliminate discrimination, provide equality of opportunity and foster good relationships between groups with protected characteristics.

The Human Rights Act 1988

This provides additional protection against unnecessary intrusion by the State into private and family life.

It includes personal dignity, the interaction a person has with others, both in private and in public, and respect for confidential information, particularly regarding the storage and sharing of such information.

The Data Protection Act 1998

Under this Act, data relating to the protected characteristic of gender reassignment is regarded as 'sensitive information' and should not be released without an individual's permission.

The Gender Recognition Act 2004

This enables a person, aged 18 or over, to change their legal gender to have the gender status, for all purposes, which aligns with their gender identity rather than their birth-assigned sex.

The Act gives trans people the right to obtain a new birth certificate. A Gender Recognition Certificate (GRC) can only be obtained after two years in the 'new' role.

Whether or not a person has a GRC should have no bearing on employment or employment protections, apart from adding an extra layer of privacy.

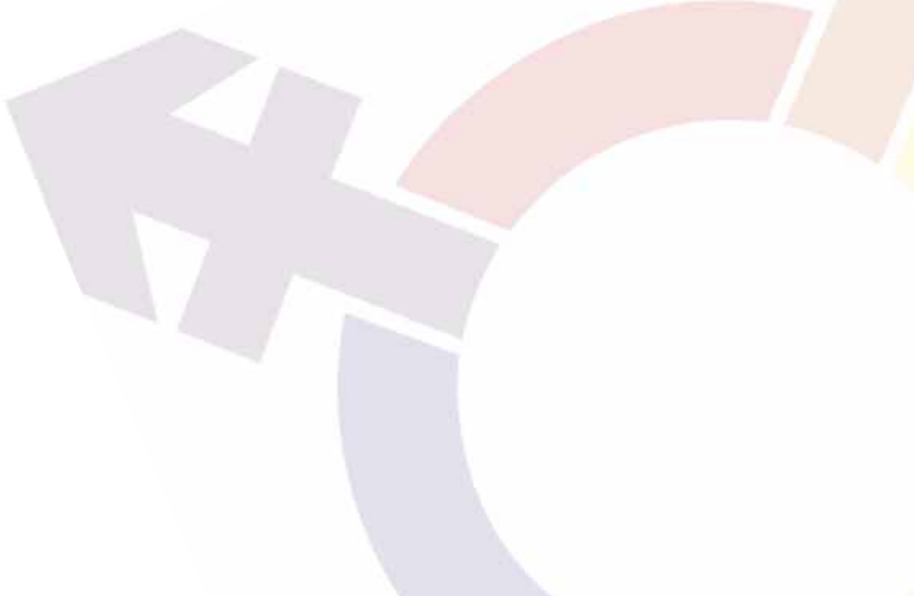
Employers should treat people in accordance with their gender identity, regardless of whether or not they have a GRC, and should not ask trans staff if they have one.

The Act also includes very important measures to protect the privacy of a trans person. It makes it a criminal offence for a person who has acquired protected information in an official capacity, such as through a recruitment process, to disclose that information to any other person. The offence does not apply if the individual has given their permission to the disclosure of such information.

Not all trans people apply for a GRC. It is purely a personal decision and the process of obtaining a GRC is not easily accessible to all trans people.

Disclosure Scotland (DS)

There is a confidential DS process specifically for trans applicants with a trans sensitive application form. The helpline is: 0870 609 6006 or email: info@disclosurescotland.co.uk.



Issues for people transitioning in the workplace

The person undergoing transition should be at the core of any decision-making process in the workplace and should feel in control throughout the process. Managers should consult with the trans person regarding the nature and frequency of the support to be provided during and after the transition process.

Issues to be considered include:

- **Dates and timescales** – when key changes will be taking place and how they fit into any relevant work patterns and deadlines. Any changes will depend on the individual, but could include name, documentation and physical changes.
- **Records and systems** – consideration should be given to what needs to be changed, when this will happen and what will happen to ‘previous’ records. These could include photographs and biographies on websites and newsletters and also historical information on personal records. References to the trans person’s previous name should be removed wherever possible. Breaches of confidentiality are treated in the same manner as disclosure of the highly personal details of any other employee protected under the Data Protection Act 1998.
- **Communication** – how and when the individual wishes to inform other staff, governors, students and parents. This is an individual choice; what works for one person may not work for another. Any announcements should, however, include important issues such as how to address the trans person (new name, correct pronoun), how to support them and how to deal with questions from others without breaching confidentiality.
- **Time off for medical appointments and treatment** – time off for appointments and treatments associated with gender reassignment is

protected under the Equality Act 2010. Therefore, such absences cannot be used against trans people when, for instance, considering promotion opportunities or redundancy. Absences for gender reassignment may be recorded, but not used, in any absence management process, and rather seen as a reasonable adjustment.

- **Use of toilets and changing facilities** – staff who have declared their trans status should be free to use the facilities appropriate to their self-identified gender.
- **Agreeing any dress code requirements** – where an employer has a dress code, it is good practice for this to have the flexibility to accommodate the process of transition from one gender role to another. Best practice is that dress codes are not gendered at all, but simply a list of clothes it is acceptable for staff to wear.
- **A contingency plan for dealing with media enquiries** – Anyone taking incoming calls must be more alert than usual to the possibility that the Press, in particular, are likely to invite comment if the news of a member of staff's transition has leaked out. It is advisable to prepare a generic statement, which can then be made public if necessary and appropriate. This should state that the employer supports fully all members of its community, especially those with any of the protected characteristics, and it is paramount that everyone is treated with respect and that the right to privacy, in law, is respected. Any statement, and its use, should be agreed by all parties involved.
- **Raising awareness** – employers have a responsibility to inform their staff about trans issues and the implications for working practices. This is a valuable way of overcoming prejudice and securing an inclusive environment for trans people.

Sources of Support and Information

In addition to the NASUWT, the following are a selection of sources of support and information.

Education Support Partnership

A confidential telephone counselling, support and advice service for teachers. 08000 562 561.

Gendered Intelligence

A community-interest company which works with the trans community and all those who impact on trans lives – employers, educators and service providers of all kinds; it provides training, consultancy, youth workshops, mentoring and youth groups amongst other services. **www.genderedintelligence.co.uk**.

Gender Identity Research and Education Society (GIRES)

A volunteer-operated membership charity that, in collaboration with the other groups in its field, hears, helps, empowers and gives a voice to trans and gender non-conforming individuals, including those who are non-binary and non-gender, as well as their families. **www.gires.org.uk**.

Scottish Transgender Alliance funded by: the Scottish Government Equality Unit **www.scottishtrans.org**.



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