

ASLEF

THE TRAIN DRIVERS UNION

More than
just a **union**

Best Practice Guidelines for
>>> **Transgender Workers**

The LGBT Representative Committee have developed this best practice guide to give assistance to branches and reps that may need to provide advice to transgender members.

The document deals with the legalities and ways that members can be helped in the workplace. Although it should be recognised that this is a very personal experience and different levels of support may be needed.

Further information can be sought from the organisations listed at the end of the guide and of members can always contact the representative for their district on the LGBT Representative Committee.

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BEST PRACTICE GUIDELINES FOR **TRANSGENDER WORKERS**

Introduction

A transgender person is someone who has a deep conviction that their gender (whether they are a man or a woman) does not conform to the sex they were assigned at birth. Most transgender people wish to change their name and personal details and live as a member of the gender with which they identify. This may involve hormone therapy and surgery, the process is referred to as 'gender reassignment' or 'transitioning'.

ASLEF Policy

ASLEF believes that transgender people have the right to equal treatment, protection from discrimination and full support from the union.

Transgender members have the right not to be discriminated against by ASLEF policies, practices, members or officers and allegations of discrimination will be taken very seriously.

Press for Change has estimated there are 5,000 transgender people in the UK. Many representatives will not have previous experience of advising transgender members or bargaining for equality for transgender members. It is important that the advice given is in line with ASLEF's approach.

Legal Summary

The Equality Act 2010

The Equality Act 2010 protects people who are proposing to undergo, undergoing or have undergone a process (or a part of a process) of gender reassignment. The Act makes clear that it is not necessary for people to have any medical diagnosis or treatment to gain this protection; it is a personal process of moving away from one's birth gender to the preferred gender. A person remains protected, even if they decide not to proceed with transitioning.

People discriminated against because they are wrongly perceived to be trans or who are discriminated against because of their association with trans people or issues, are also protected.

The act outlaws harassment, regardless of if the harasser intended their behaviour to be offensive. The harassment does not have to be targeted at a particular person, transphobic language, imagery, 'jokes' or actions that violate a persons dignity or create a hostile working environment are not acceptable.

The act also forbids sexual harassment – unwelcome sexual advances, touching, sexual assault, sexual jokes or materials of a sexual nature that violate a person's dignity.



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Indirect Discrimination

Because until 2005, transgender people had been unable to change their legal sex, heterosexual transgender people had been unable to marry, since legally their partner was of the same sex.

This has resulted in indirect discrimination in a range of areas, for example paternity and childcare leave, passing on pension rights and insurance policies to partners or children.

Reps should ensure that transgender workers are treated as the gender they identify as, irrespective of legal sex. Transgender workers should have equal rights and equal access to benefits, including equal recognition of their partner and family.

But further, ASLEF believes that no one should be discriminated against on grounds of gender or marital/Civil Partnership status. All should have equal rights and access to benefits, whether married or unmarried and whether their partner is of the opposite or same sex.

All contracts and agreements should be checked for possible discrimination.

Gender Recognition Act, 2004

The Gender Recognition Act 2004 gives people the opportunity to apply for full legal recognition for their acquired gender and important measures to protect people's privacy.

Applications for gender recognition are considered by Gender Recognition Panels. Once a person receives a Gender Recognition Certificate (GRC), they are legally of that gender for every purpose and have all the rights and responsibilities associated with that gender.

To make an application, a person will need to show that they have been living in their new gender for at least two years. However not all transgender people can undergo permanent gender reassignment for health, personal, family, financial or other reasons.

Whether a person has a Gender Recognition Certificate has little or no bearing on their employment. All transgender workers should be treated as the gender in which they live, whether or not they have applied for such legal recognition.

Employers should not ask for a person's GRC and asking to see one maybe regarded as harassment. The GRC is not needed to change one's name, pronouns or gender of presentation at work.

Representing Transgender Members in the workplace

The Individual Case – agreeing a process

Gender transitioning is often a very stressful time for a trans person. It is very important that the employer agrees how the process will be handled with the person concerned. Issues to consider include:

- > Whether the member wants to stay in their current post or be redeployed
- > The expected time scale of any medical and surgical procedures
- > The expected point or phase of change of name, personal details and gender
- > What time off will be required for treatment and/or possible side effects from any medication
- > Whether the member wishes to inform line managers, colleagues and service users themselves, or would prefer this to be done for them
- > What amendments will be required to records and systems
- > Whether a transgender person is adequately covered by existing policy on issues such as confidentiality, harassment and insurance and if not, how these will be amended
- > Whether training or briefing of colleagues will be necessary and at what point and by whom this will be carried out

Communicating news to other workers or service users

There is no need to inform co-workers that a worker is undergoing gender reassignment. It is only necessary where the working relationship is continuing through transition. It is good practice for the employers to take responsibility for informing those who need know but the wishes of the individuals should be given priority.

Education should cover general information about transgender people and specific information on the situation of the particular person.

At the point of change of gender, it is common for transgender people to take a short time off work and return in their new name and gender role. This is often used as an opportunity to brief the appropriate people. In all cases, the legal obligations of management should be explained and the unacceptability of harassment made clear.

Reps should work with management on this process. It will be important to:

- > give the name the person will wish to be known by in their new gender and emphasis emphasise the importance of using the correct name and gender pro-noun (he or she) in future.
- > Include sufficient information to convey the facts and satisfy people's curiosity
- > not go into too much detail
- > respect the wishes of the transgender person and their right to medical confidentiality in terms of discussing detailed personal aspects
- > pitch the information at a level and style appropriate to the audience involved
- > include details of how colleagues might seek further information

Medical treatment during employment

Time Required

People who decide to undergo medical or surgical procedures for gender reassignment will need some time off work. The time off required will vary greatly depending on the nature of the surgery.

Reps should seek to negotiate adequate paid time off, distinct from other sick leave. Time off should ideally be recorded separately from sickness absence and not used for absence management or monitoring purposes by the employer.

The process of gender reassignment

Diagnosis is carried out by a specialist and may take months or years. Appointments may involve travelling long distances, so are likely to take a whole day. Preliminary diagnosis is usually followed by hormone therapy.

Typically the person's physical appearance begins to change after about six months. Some people start to live full time in their new gender role before they begin hormone therapy; others remain in their usual gender role at work for longer.

When a person starts to live full time as a member of their new gender, their name and other records will be formally changed. From this point they should be treated as belonging to their new gender for employment purposes.

They may go on and have surgery after one or two years of hormone therapy, some people may require more than one operation. The time off following this will vary greatly, depending on the nature of the surgery and the physical demands of the person's job.

Employers need to be aware of the possible side effects of medication and the general stress of transitioning, which can affect work performance. People may need reduced hours or duties for a temporary period when they return to work following surgery.

When people complete their transition, they may no longer regard themselves as being under the trans umbrella. They might consider having been transsexual as an aspect of their medical history that has now been resolved. In such cases, they simply describe themselves as men or as women and it is disrespectful to insist on calling them trans, transgender or transsexual against their wishes.

Health and Safety considerations

Any member who is beginning the transitioning process should have a full risk assessment carried out; this should be with the input of the employee concerned and take into account individual requirements. The risk assessment should be kept under review and steps taken to eliminate any risks at different stages of the process.

Any changes deemed necessary to the person concerned duties or working hours can only be carried out with consultation and approval.

Any medication taken during the process must also be declared immediately.

>>> REGULATIONS STATE

GO/RT3451 Section 2.1.2 Train dispatch, shunting and train driving – general medical examinations

2.1.2.1 Infrastructure managers and railway undertakings shall not permit persons to carry out dispatch, shunting or train driving work where there is reason to believe that a person is suffering from any medical conditions or be taking any medication, drugs or substances, which are likely to cause:

- a sudden loss of consciousness
- b a reduction in attention or concentration
- c sudden in capacity
- d a loss of balance or co-ordination
- e significant limitation of mobility

Records and Confidentiality

Reps should make sure that personnel records for transgender people do not refer to a previous name, and records made prior to a change of name are updated.

Because transgender people have not been able to gain legal recognition of their “new” gender in the past, it has been necessary for some records (e.g. relating to pensions and insurance) to include a reference to legal sex. Access to records showing the change of name and any other details associated with the individual’s transgender status, such as records of absence for medical treatment, should be restricted to appropriate staff who “need to know” for specific reasons. “Need to know” refers to those directly involved in the administration of a process, for example the personnel officer, or the person who authorises payments into a company pension scheme.

Breaches of confidentiality should be treated in a serious manner and may amount to harassment. Telling others without the Trans person’s permission could result in a criminal conviction and a £5,000 personal fine.

The Gender Recognition Act gives anyone applying for or holding a Gender Recognition Certificate particular privacy rights. It is a criminal offence to pass on information acquired ‘in the course of official duties’ about someone’s gender recognition, without the consent of the individual affected. ‘official duties’ includes employment, trade union representation or supply of business or professional services.

ASLEF representatives must be scrupulous in protecting the confidentiality of all transgender members. Some transgender members may be out at work about their gender history. This is their decision only. Being out to one person or small group of people does not necessarily mean a person wants to be out to everybody. Union records must be kept up to date and old records which refer to a previous name/gender must be destroyed (or if they must be kept and cannot be updated, their security ensured).

Redeployment and retirement

A worker undergoing gender reassignment may ask to be redeployed or retired. Any course of action should be decided according to the wishes of that member.

In large organisations, a decision to redeploy may be accommodated relatively easily, especially if the worker is able to move to another site or area.

Reps should ensure that an inability to accommodate the member's choice does not become grounds for dismissal or retirement.

If redeployment does take place, it may be best for it to coincide with the change of gender, so that the member starts their new post in their new gender role.

Negotiated retirement packages should be equivalent to those offered to other workers who accept early retirement.

Single Sex Facilities

A transgender worker should have access to "men only" or "women only" areas according to the gender in which they live permanently.

The employer and worker should agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to the other. An appropriate marker for using the facilities of the worker's "new" gender may be the point at which the person begins to live permanently in the gender with which they identify.

It is not acceptable to expect transgender workers to use separate facilities, for example a disabled toilet. Transgender workers are entitled to support from their employers, including any necessary discussions and explanations with other members of the workforce or members of the public. It is the employer's responsibility to manage their attitudes.

Dress Codes

Reps should ensure employers allow flexibility in dress codes to accommodate the process of transition from one sex to the other.

Benefits at work

There are particular issues around benefits that have affected transgender people because they have previously been unable to gain full legal recognition of their “new” gender. They will continue to affect people who do not apply for gender recognition, for whatever reason.

Pensions

Everyone born after April 1955 now receives state pension at 65. Women born before 1950 can claim state pension at 60. Transgender people without a GRC are paid their state pension according to the sex recorded at birth.

Male-to-female transgender people who gain a Gender Recognition Certificate after turning 60 can have their state pension backdated to their 60th birthday.

Inappropriate questions

Inappropriate questioning is anything of a higher level of intimacy than questions you would ask a person who is not trans. For example, it would be unthinkable to ask a man you didn't know very well about the size and shape of his penis, or to ask a woman you only knew a little whether she wore a wig or a padded bra. It is completely inappropriate to quiz transgender people about their bodies.

Natural curiosity about trans people should not override usual politeness and sensitivity. It is impolite to ask trans people about previous names, what they used to look like or whether they have a Gender Recognition Certificate. If someone wants to share personal information they will do so in their own time.

Trans individuals are not obliged to be a public spokesperson for all trans people, they should not be expected to talk about the subject anywhere at any time. If the person says they would rather not discuss something, they should not be pressurised to do so.

Use of pronouns

If someone wishes to change the pronoun by which they are referred (she to he, or vice versa) people must understand this even if you initially find it difficult to consider them as that gender. Deliberately using the opposite pronoun to the one a person prefers will be experienced as offensive, judgmental and hurtful. If unsure of how someone wishes to be addressed it is usually better to avoid using any gendered terms than risk insulting them by guessing wrong.

When referring to a trans person in their absence, still use their preferred pronoun, not only out of respect but also because it will help prevent confusion, uncertainty and embarrassment for everyone.

Very few people manage to understand everything about transgender issues right away. What will be most important is your willingness to make an effort to learn and to be supportive.

ASLEF have internal structures to enable lesbian, gay, bisexual and transgender (LGBT) members to come together confidentially to work for greater equality and rights. Members do not have to come out as trans at work to be able to access confidential LGBT union events and information. However, trans members will only know about them if all trade union reps publicise their existence on local notice boards and websites.

Glossary of Terms

> **Transgender person**

a person whose perception of their own gender identity does not conform to the sex they were assigned at birth.

> **Transsexual person**

legal/medical term for someone who lives (or wishes to live) permanently in their 'new' gender.

> **Gender identity**

the gender a person identifies with. This is not necessarily the same as the sex they were assigned at birth.

> **Gender dysphoria**

medical diagnosis of a consistent and overwhelming desire to live in the opposite gender to that assigned at birth.

> **Gender reassignment**

the process of transitioning from the gender assigned at birth to the gender the person identifies with. This may involve medical and surgical procedures.

> **Legal sex**

In the past in the UK, the legal sex of someone has been defined by their birth certificate and cannot be changed. The Gender Recognition Act 2004 means people can now apply to gain recognition of their change of gender for all legal purposes.

> **Gender Recognition Certificate**

issued by Gender Recognition Panels – signify full legal rights in acquired gender and allow the issuing of a replacement birth certificate

> **Transsexual people**

Transsexual people are usually distinguished from other transgender people by their strong desire to live completely and permanently as the gender opposite to that which they were originally labeled at birth.

Transsexual people seek to bring their body into accordance with their gender identity so that the man or woman that they really are, finally becomes clearly visible. The lengthy and difficult process that transsexual people go through in order to achieve this is called 'transitioning' or 'gender reassignment'. It usually involves significant medical treatment in the form of hormones. It sometimes involves surgical procedures.

Transitioning is not just about changes in a person's physical appearance.

During transition, social and personal relationship dynamics also change to better reflect the gender identity of the transsexual person. This can be both challenging and rewarding for the transsexual person and their friends and family.

> **A female-to-male (FTM) transsexual man or trans man**

is someone who was labeled female at birth but has a male gender identity and transitions to live completely and permanently as a man.

> **A male-to-female (MTF) transsexual woman or trans woman**

is someone who was labelled male at birth but has a female gender identity and transitions to live completely and permanently as a woman.

> **Cross-dressers or transvestite people**

People (usually men) who call themselves crossdressers or transvestites, dress as the opposite gender for emotional satisfaction, erotic pleasure, or just because they feel more comfortable doing so. They feel a strong recurring desire to crossdress but are generally happy with their birth gender and have no wish to permanently alter the physical characteristics of their bodies. It is rare for people who cross-dress purely for erotic pleasure to identify as trans or transgender.

> **Intersex people**

Sometimes a baby's external genitals, their internal reproductive system or their chromosomes are in-between what is considered clearly male or female. People born with these kinds of variations are often referred to as intersex people.

There are many different intersex conditions. The issues faced by intersex people can be similar to those faced by trans people. For example, some intersex and trans people are labeled by others as a gender that doesn't match their gender identity. Some intersex and trans people decide to undergo hormone treatment or surgical procedures as teenagers or adults in order to bring their physical appearance more closely into alignment with their gender identity.

However, there can be very significant differences between the experiences of trans people and intersex people. Intersex people are often identified as such by doctors while they are very young children and their genitals may be operated upon before they are old enough to give consent. They frequently face a long struggle with doctors to get honest information about their intersex condition and any surgery that was carried out on them when they were young.

> **Sexual orientation**

Refers to who you are attracted to, Transgender people can be straight, gay/lesbian or bisexual just the same as everyone else. Male-to-female transsexual women can be described as straight if they are attracted to men, lesbian if they are attracted to women or bisexual if they are attracted to both men and women.

Likewise, female-to-male transsexual men can be described as straight if they are attracted to women, gay if they are attracted to men or bisexual if they are attracted to both men and women.

Organisations working for Trans Equality and useful contacts

ASLEF LGBTRC

Details of district reps for the LGBT Representative Committee can be found on the ASLEF website, in the ASLEF diary or by contacting head office on

020 7324 2400

Trades Union Congress

The umbrella body for Britain's unions, The TUC has its own LGBT committee and annual conference and there are LGBT networks for Scottish TUC, Wales TUC and the TUC's English regions – contacts via the TUC website.

www.tuc.org.uk/equality

Gender Recognition Panel

PO Box 6987, Leicester LE1 6ZX

Tel: 0845 355 5155

Email: grpenquiries@tribunals.gsi.gov.uk

www.grp.gov.uk

Press For Change

Press for Change is a political lobbying and educational organisation, which campaigns to achieve equal civil rights and liberties for all trans people.

BM Network, London WC1N 3XX

Email: editor@pfc.org.uk

www.pfc.org.uk



GIRES

The UK-based Gender Identity Research and Education Society seeks to improve the circumstances in which trans people live, by changing the way that society treats them.

c/o Melverly, The Warren, Ashtead, Surrey KT21 2SP

Email: admin@gires.org.uk

www.gires.org.uk

The Gender Trust

The Gender Trust provides support and an information centre for anyone with any question or problem concerning their gender identity, or whose loved one is struggling with gender identity issues.

PO Box 3192, Brighton BN1 3WR

Email: info@gendertrust.org.uk

www.gendertrust.org.uk



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