

**STANDARD OPERATING PROCEDURES:
OFFICE OF THE BEDFORDSHIRE POLICE AND CRIME COMMISSIONER**

Title	Transgender Policy
Area of Compliance	Human Resources
SRR Ref. No.	PCC - SR8
SOP Ref. No.	002/2015
Version No.	1.0
Senior Lead	Chief Executive
Author	Compliance Officer

Revision History

Date	Revision	Change	Section	Review Date
November 2015	1.0	New Document		

1. Purpose

1.1 The purpose of this document is to recognise that the Office of the Bedfordshire Police and Crime Commissioner is wholly committed to employing a diverse workforce that is fully representative of the community it serves.

1.2 All individuals working for the Office of the Bedfordshire Police and Crime Commissioner have the right to be treated fairly, equitably and with dignity and respect.

1.3 This procedure provides for a framework that details general guidance and support that will be available to staff who live in a gender other than assigned at birth. Any further guidance need to contact HR (Bedfordshire Police Force)

2. Background

2.1 The Equality Act 2010 states that it is unlawful for an employer to discriminate against any employee, job applicant or contractor on the grounds of that person's sex, or gender

realignment, or because they are married or in a civil partnership. The law also covers harassment and victimisation. The Act also states a person has the protected characteristic of gender realignment if the person is proposing to undergo, is undergoing or has undergone a process (or a part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

2.2 The Act also states a person has the protected characteristic of gender realignment if the person is proposing to undergo, is undergoing or has undergone a process (or a part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

2.3 As soon as an individual indicates the intention to commence gender realignment, they receive legal protection. Discrimination in this context means treating a trans person less favourably than you treat (or would treat) another colleague who is not undergoing gender realignment.

2.4 Employers can be held responsible for discriminatory acts by its employees unless the organisation can show that it had taken such steps as were reasonably practical to stop the employee from doing the particular act or acts of that kind. Employees remain individually liable for their own discriminatory acts, even where the organisation is potentially liable.

2.5 There is also protection from harassment by explicitly making an employer liable if an individual is harassed by a third party (such as a member of the public using a service) during the course of employment, in circumstances where the employer knows that the person has been subjected to such harassment on at least two occasions (whether by the same or by a different third party), but has failed to take steps to prevent it.

2.6 An employer is also acting discriminately if they treat the trans person less favourably as a result of their sickness/injury absence relating to their gender realignment.

2.7 This procedure relates to the employment and management of the cases of all staff that identify and present themselves as transgender, and may be intending to undergo, are undergoing or have undergone gender reassignment.

3. Affected persons

3.1 This procedure will apply to all staff working in the Office Police & Crime Commissioner (OPCC) whether employed full-time or part-time, fixed term, permanent, seconded or on a temporary basis.

4. Strategic Risk Register

4.1 The Equality Policy will be monitored within the Strategic Risk Register to ensure full adherence to the policy at all times.

5. Policy

5.1 **Line Management** - Line managers have day to day responsibility for the management and welfare of their staff. Consequently they have a key role to play in supporting an individual who is undergoing the transition process. Specific duties will include the following:

- Liaise with the Human Resources Manager (HRM) for guidance.
- When approached by the individual undergoing gender reassignment, conduct initial meeting and agree and record a plan of support via the One to One/PDR system.
- Maintain utmost confidentiality of any information relating to the trans person at all times.
- Provide support to the individual undergoing gender reassignment and ensure that any possible harassment is dealt with quickly and effectively using the appropriate procedures.
- Reasonable steps should be taken to accommodate the trans employee's requests for leave due to medical treatment in line with the Discretionary Leave Procedure.
- Consider, where contractual sick pay is exhausted, the possibility to agree periods of unpaid leave, a change in working hours or patterns, to help manage attendance.

5.2 **Human Resources Department**

- Ensure that the Transgender Policy and Procedure are applied fairly and consistently.
- Record the agreed Memorandum of Understanding agreed between the member of staff and line manager.
- Arrange for a new Warrant/Identity Card
- Maintain utmost confidentiality of any information relating to the trans person at all times.

The OPCC Application for Employment contains a confidential Equal Opportunities monitoring form which does ask the applicant if they have been through gender transition or gender reassignment.

5.3 **Disclosure and non-disclosure of Gender** - There is no obligation for a trans person to disclose their gender history as a condition of employment. If the person chooses to

disclose this information, it is unlawful to use this information as a reason for not offering them the post.

5.4 As part of the recruitment process, a trans person may disclose their gender status through relevant references to different names they were previously known as. In the event that an individual does make a disclosure, information relating to this should be dealt with the same sensitivity as any other personal disclosure.

5.5 Non-disclosure or subsequent disclosures are not grounds for dismissal.

5.6 Vetting / Medical Screening - Forms used for security checks, vetting and medical screening will seek information that could lead to identification of transgender status. This information will remain confidential and the disclosure of this information will be restricted to those closely involved who will be expected to honour that confidentiality. Under Section 22 of the GRA, it is a criminal offence if this information is inappropriately disclosed.

5.7 References - If giving a reference for someone moving to a new job, a reference should be in the name which will be used in the new job and not disclose a former name. It may sometimes be necessary for a transsexual person to disclose a previous identity in order for references from past employers to be obtained. In these cases strict confidentiality and respect for dignity should be applied

5.8 Prohibition of Disclosure of Information - Under the GRA, Section 22 (Prohibition of disclosure of information), it is an offence for an individual who has acquired 'protected information', (information relating to a person who has made an application under the GRA) in their official capacity (staff), if they disclose this to any other person. Once a person has obtained a GRC there must be no disclosure of information relating to their previous gender unless for purposes outlined below.

- It is not an offence under Section 22 to disclose protected information relating to a person who has applied for a GRC if the disclosure is for:
- The purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal
- The purpose of preventing or investigating crime
- The information does not enable the person to be identified
- The person has agreed to the disclosure to be identified
- The information is protected information by virtue of Subsection 2(b) and the person by whom the disclosure is made does not know or believe that a full GRC has been issued;

5.9 Breaches of confidentiality should be treated in a serious manner and may amount to unlawful harassment and may be addressed formally using the relevant procedures.

5.10 Disclosure by the individual - Some transgender staff may be open at work about their gender history. Making such information known to one person or a small group of people does not mean that a person necessarily wants the information to be known to everybody. An employee may choose to disclose information informally to their line manager and other colleagues, under such circumstance strict confidentiality should also be observed by parties involved and should be reminded of their obligations at the point of disclosure.

5.11 Employees are expected to comply with the Bullying, Harassment and Victimisation Policy, and the Equality Policy, and treat transgender officers and staff with respect and dignity and observe the right of privacy.

5.12 Changing name and status of employee - If the employee discloses their status as a transsexual person or they are transitioning during their employment, a decision will need to be made as to when the employee's gender is changed in personnel records and public references e.g., web directories, security passes, etc. This decision should be made in agreement with the individual concerned, and this would normally be once the individuals Deed Poll is activated being signed and witnessed.

5.13 Previous gender and Employee Records and Files - Regardless of the legal status of the individual concerned, an individual's previous gender identity should be kept confidential, including the provision of references for ex-employees. Access to records regarding the change of status will be restricted to the HR Department

5.14 Personal records of transgender staff should not refer to a previous name, any records made before a change of name should be updated. Any records, such as medical records, may still record the identity of a trans person's gender history. For people without a GRC, some records (e.g., pension and insurance records), may also include a reference to their current legal sex. Any record which would disclose to a third person that a change has occurred must be removed from files. All material that cannot be disposed of (e.g., copies of previous years Personal Development Records, Disciplinary Warnings that have not yet expired) should be saved in a 'Restricted' folder in the individual's electronic personal file with the instruction "Confidential, HR Manager Only".

5.15 Arrangements for existing officers and staff - Agreement of support - An agreement between the individual and the line manager should be recorded which enables the individual to give formal notification to the organisation and to facilitate the amendment of personnel records with the individuals' change of name (if appropriate) and gender within

agreed timescales. The need for flexibility in timescales must be allowed for and ultimately it is the individual's decision.

5.16 The following areas should be discussed with the trans person and be included:

- Is there a need for a risk assessment?
- What is the expected point of change of name, personal details and social gender?
- What amendments will be required to records and systems?
- If at all, when and how should others be communicated with?
- How may colleagues be assisted with their understanding of and appropriate response to the issues?
- Is there a need for the H&WB Unit to assist with providing medical and other advice and support?
- Is there a need for revised duties and uniform change?
- Is there a need for liaison with CPS in respect of current cases?
- Reassurance of confidentiality of personal information

The agreement of support should be reviewed at least every 3 months, but should also be reassessed at each significant stage of the process. The line manager will agree review dates with the individual.

5.17 Change of location - In agreement with the staff member concerned, there may be limited scope for relocation, depending on their role. Any requests should be discussed with the relevant line manager in the first instance.

5.18 Use of Facilities - Part of the negotiation process will be to agree at which point the individual changes their use of changing rooms and toilets. It is not acceptable for a trans person to use separate facilities, e.g., an accessible toilet for disabled people, although this might be a short-term option during the early stages of reassignment as long as the individual is happy with the situation. An appropriate time for using the facilities of the 'new' gender is likely to be the change of social gender.

5.19 Other staff may express concerns but this does not justify, in law, discriminatory treatment. Trans employees are entitled to expect support from their employer including any necessary discussions and explanations with other members of the workforce or members of the public.

5.20 A trans employee should be granted access to 'men only, or 'women only' areas according to the sex which they permanently present. Failure to allow this is a breach of the Sex Discrimination Act (Gender Reassignment Regulations) 1999. Extra care and sensitivity needs to be taken in the case of female to male trans employees, who may not be able to use urinals.

5.21 Notifying work colleagues - There is no general requirement or need to inform colleagues that an employee is undergoing gender reassignment. It would only be necessary to do so where the relationship with someone who knows the individual prior to the change of gender is to continue. To assist, the Line Manager should discuss with the individual how widely they wish their decision to be made known. If the individual decides that colleagues should be informed, the Line Manager will arrange for this to be done in a structured way, informing them of the issues and taking the opportunity to educate relevant staff, who will be informed of the need to treat the individual with respect and dignity. The individual may wish to participate in the notification either in person or by letter, or they may wish it to be done by others (e.g. HR Manager, independent line manager, external organisation).

5.22 Role Exemption - The individual may feel more comfortable being temporarily redeployed during the initial phase of the gender reassignment if the role involves face-to-face contact with the public. This should not be assumed and should be discussed in detail with the individual to ensure that maximum support is provided. No decision to remove the individual from the role will be taken without prior discussion and agreement.

5.23 Transitioning - This is a highly personal and confidential stage in the process for the trans person and is a process, rather than a single event, where the individual will begin the physical, social, and emotional journey of becoming their identified gender. Employers will need to be kept informed of some parts of the transition process, but intimate and detailed medical questions should not be asked of the individual and should remain private. In particular, the individual should not be asked about the method that they take to undergo transition. The individual should be involved in all discussions and decisions that will affect them at work regarding the transitioning process of gender reassignment.

5.24 Absence - The Gender Reassignment Regulations do not specify a minimum or maximum period of time employers should allow a person undergoing medical or surgical treatment related to the process of gender reassignment. The absence allowed to someone undergoing gender reassignment in terms of time off work should be compared equally with absence due to sickness or injury of other people which in their case is not related to gender reassignment and will be managed under the Attendance Management Policy and Procedure.

5.25 An officer or employee who undergoes gender reassignment surgery will receive the appropriate sick pay in accordance with procedure, and their pay will be reduced after the appropriate stated time period unless discretion to remain on full or half pay is granted under the normal criteria (see Attendance Management Procedure).

5.26 If the trans person has been diagnosed with gender dysphoria or gender identity disorder, they may be recognised as disabled under the Equality Act 2010. In these

circumstances it may be appropriate for the Line manager to discuss the possibility of a Disability Passport and Application for Reasonable Adjustments with the individual.

5.27 Complications as a result of medical treatment - Complications may arise as a result of medical treatment for gender reassignment resulting in prolonged incapacity for work. As with any other long-term illness the individual will be supported and monitored in accordance with the Attendance Management Policy and Procedure. If incapacity continues beyond normal expectations for the process undergone consideration may be given to the following:

- retirement on medical grounds
- redeployed to a different role
- formal Capability proceedings

5.28 Genuine Occupational Qualifications (GOQ) - A GOQ exists when the specific nature of a job, or duties attached to it, require it to be undertaken by members of one sex. The Sex Discrimination Act (SDA), in very limited circumstances, makes discrimination lawful in, for example, recruitment, training, promotion and transfer in a job where a GOQ is applicable.

5.29 The Sex Discrimination Act allows for two kinds of GOQ :

- On the basis of sex (the job requires either a man or a woman)
- On the basis of transition (where an individual is intending to undergo, is undergoing or has undergone gender reassignment but has not obtained a GRC).
- It would be lawful to discriminate against a female to male (FTM) transsexual if it would also be lawful to discriminate against a man (e.g. restricting a job involving intimate body searching of women to women applicants).
- Using the example above, if a police officer working under a Genuine Occupational Qualification (GOQ) with their birth gender is awarded their Gender Recognition Certificate (GRC), the Force may give consideration to transfer them to an alternative role on the grounds that they no longer have the required gender of the Genuine Occupational Qualification.

6. Responsibilities

6.1 Legislation:

Sex Discrimination (Gender Reassignment) Regulations 1999

Gender Recognition Act (GRA) 2004

Equality Act 2010

6.2 A number of outside agencies exist who can provide support and guidance:

- The Gender Trust, PO Box 3192, Brighton, BN1 3WR (email: info@gendertrust.org.uk) – a charity which specifically helps adults who are transsexual, gender dysphoric or transgender.
- National Police Trans Association (NPTA) (www.ntpa.org.uk) - The NPTA exists primarily to provide support to serving and retired Police Officers, Police Staff and Special Constables with any gender identity issue including, but not exclusively, Trans Men, Trans Women, people who identify as 'Transgender', Androgyne or Intersex. Also the NPTA will give support to people who identify as Cross Dressers. The NPTA further aims to provide support to all serving and retired police officers, police staff and special constables who are dealing with people with a gender identity issue whether that person is a colleague, family member or a member of the public involved in a police matter.
- Information relating to legal gender recognition, including application number of guidance packs, can be found at <http://www.grp.gov.uk>

7. Guidance - gender realignment

The Process

Diagnosis of gender dysphoria requires the agreement of two doctors whom specialise in the diagnosis and care of gender identity issues. Diagnosis is normally followed by hormone therapy, and typically after about six months the individual's physical appearance begins to change. Transsexuals will often change their social gender around this stage, although not necessarily their gender role at work.

At some point the individual will want to start to live full time in their acquired gender, their name will be changed by Deed Poll and other records (such as their driving licence and passport) will be formally changed at this stage. This is normally considered to be the start of the individual's Real Life Test/Trial (RLT). Gender reassignment surgery will, generally not be considered before the RLT which can be as little as a year, but normally two or more years, this is decided by the individual and their medical supervisors.

If there are no extraneous delays (for example funding problems or waiting lists), the individual usually proceeds to one or more reassignment surgeries after hormone therapy, although some individuals never undergo surgery.

Real Life Experience / Real Life Test



The individual is expected to live and work in their new gender role for a period normally, up to two years prior to any irreversible surgical intervention. This period is often referred to as the 'real life experience' or 'real life test'.

Stages of Transition Process

There are a number of stages which may be involved in the transition process:

Social changes – the individual will assume a new name and gender, inform family and friends, and live and work in the chosen gender role. This is known as the 'real-life' test and normally takes place after psychiatric assessment.

Hormone and other treatments – following psychiatric assessment, provision of cross-gender hormone prescriptions and possibly cosmetic means to aid appearance in the acquired gender.

Surgical gender re-assignment – surgery is not usually performed until the transgender person has spent at least two years in the 'real-life' test. Not all individuals will undergo gender re-assignment surgery.

Gender Recognition Certificate (GRC)

Under the Gender Recognition Act 2004, trans people who have lived in their acquired gender for at least two years can make an application for a Gender Recognition Certificate (GRC) to the Gender Recognition Panel at the Tribunals Service. Once granted, this enables the person to legally change their gender. It is not essential for an individual to have had surgery or have hormonal treatment in order to be granted a GRC.

Not all transsexual people will wish to apply for a GRC, for example if they are happily married they may not wish to annul the marriage.

Office of the Police and Crime Commissioner for Bedfordshire

Bridgebury House | Woburn Road | Kempston | Bedfordshire | MK43 9AX

Tel: 01234 842 066 | Email: pcc@bedfordshire.pnn.police.uk

Web: bedfordshire.pcc.police.uk | Twitter: [@BedsPCC](https://twitter.com/BedsPCC)