

Gender identity

An introductory guide for trade union reps
supporting trans members



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Cover photo: Marcus Rose

Introduction

UNISON and the Scottish Transgender Alliance have produced this guide for union reps supporting trans members. For many reps this may be their first experience of dealing with trans equality. The guide gives a background to what it means to be trans followed by practical advice on common workplace issues. This guide should be read alongside UNISON's factsheet Transgender Workers' Rights, which gives further information on the law and key negotiating points.

Trans workers face high levels of prejudice and discrimination: UNISON is committed to tackling this discrimination and building equality. Everyone has the right

to work with dignity and respect and to contribute to the workforce to their full ability.

The extent of discrimination against trans people means that unless an organisation is explicitly transgender inclusive, many trans people will assume they will not be treated fairly. This applies to employers and also to us as a trade union. We must actively demonstrate our commitment to trans equality.

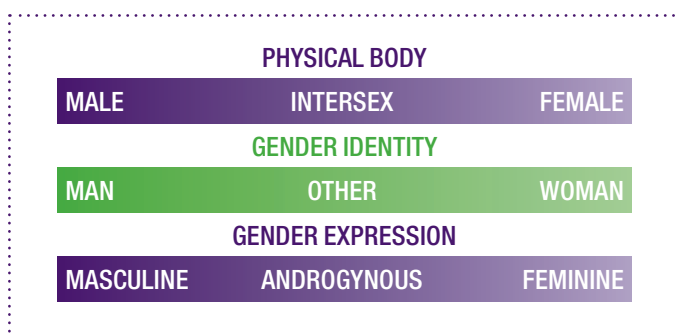
In UNISON, trans members organise with lesbian, gay and bisexual members, locally and nationally. See page 10 for more information.

Background

What is gender identity?

When a child is born, a midwife or doctor takes a quick glance at the baby's genitals and declares the baby a boy or a girl. In day-to-day situations, we determine people's gender in the first seconds of meeting by unconsciously observing and analysing a huge number of different gender-associated cues. These include clothes, body shape, voice, face shape, mannerisms and behaviour. We also use these clues to signal our own gender. For the majority of people, these gender-associated cues and the gender they were labelled at birth match the gender they identify as. But for a minority not everything matches up as expected.

It can feel uncomfortable and difficult to think about something usually determined easily, without any conscious thought. One way to help think about gender is to use the diagram below showing gender separated out into three different scales:



Physical body

A person's physical body has characteristics that are gendered, including genes, hormones, internal organs and external features.

Gender identity

A person's gender identity is their internal sense of where they exist in relation to being a woman or a man.

Gender expression

A person's gender expression is their external gender-related clothing and behaviour, including interests and mannerisms.

Throughout history, small but significant numbers of people have found that their physical bodies, gender identities and gender expressions do not all line up at one end of these three scales. There are people whose daily experience of their gender is of every combination of positions on these scales. While nature loves variety, society tends to prefer similarity. There is often a lot of pressure, harassment and discrimination to force people not to reveal any gender variance.

Transgender or trans people

In the UK, the terms transgender people or trans people are commonly used as umbrella terms to cover the diverse ways that people find their gender identity differs from the gender they were labelled at birth.

As trans people have become more widely known and written about, various terms have developed to highlight similarities and differences. However, individual people will always view themselves, and experience their lives, in a unique way. This guide sets out the most common definitions used in the UK. Terms used in other parts of the world may be different and terminology constantly evolves, so definitions may change in the future.

Transsexual people

Transsexual people strongly and consistently self-identify as a different gender from the gender they were assigned at birth and therefore experience an intense need to transition from male to female (trans women) or from female to male (trans men).

The process that transsexual people go through in order to achieve this is called 'transitioning' or 'gender reassignment'. It is an individualised process that varies in length, stages and complexity from person to person. As well as social changes such as using a new name and pronoun (she, he, they), it may involve physical changes through hormone treatment and sometimes surgical procedures. Whether someone accesses hormone treatment or surgeries is a private and personal decision and is not relevant to their right to have their gender identity respected. Protection from discrimination because of gender reassignment under the Equality Act 2010 is not conditional on any medical diagnosis, supervision or treatment.

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.

There are gender identity clinics within the National Health Service that help people to transition. They currently follow the international standards of care established by the Harry Benjamin International Gender Dysphoria Association (HBIGDA), which is now known as the World Professional Association for Transgender Health (WPATH). The standards of care are updated and revised as new scientific information becomes available and can be found at: wpath.org

The Departments of Health have developed clear guidance on transgender care pathways for health practitioners and transgender people.

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 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.

A trans man is someone who was labelled female at birth but has a male gender identity and transitions to live completely and permanently as a man. Following gender reassignment, he may prefer to describe himself as a man with a trans history.

A 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. Following gender reassignment, she may prefer to describe herself as a woman with a trans history.

Non-binary trans people

Some people do not feel comfortable thinking of themselves as simply either men or women. Instead they feel that their gender identity is more complicated to describe. It is important to remember that being a non-binary trans person is not the same as being an intersex person. UNISON is developing separate guidance on supporting intersex workers. Some non-binary trans people identify their gender as a mixture of being a man and a woman or as fluctuating between man and woman. Others feel they have no gender and prefer simply to be seen as a human being. Non-binary trans people use a range of words to describe themselves, the most common currently being: genderqueer, gender-fluid, gender variant and agender, although other terms are occasionally used. Some people will prefer not to define themselves using anything more specific than just transgender or trans. It is commonly agreed within these communities that self-definition is the most important criteria.

Due to society's expectation that all people, including transgender people, will identify as either male or female, it

can be very difficult to work out how to express a gender identity that is neither simply woman or man. Some people therefore experience a period of uncertainty about how they relate to the highly gender-stereotyped world around them.

Non-binary trans people span a wide range of desire to transition. Some have no interest at all in undergoing any form of gender reassignment. Others may wish to partially transition. Some may undergo the same gender reassignment process as transsexual people but reject identifying simply as the gender they transition to. Occasionally, the desire to transition might fluctuate over time.

Respecting non-binary gender identities is as important as respecting other aspects of people's identities. It is important to use the name, title and pronoun that each person requests. The gender neutral pronoun most commonly requested by non-binary people is 'they', with the title 'Mx'. UNISON's membership database includes Mx as a title option.

Many non-binary people are protected by the Equality Act 2010 as someone considering undergoing any part of a process of gender reassignment has the protected characteristic.

Cross-dressing people

Some people dress occasionally or more regularly in clothes not associated with the gender they were assigned at birth, as defined by socially accepted norms. They often feel a strong recurring need to cross-dress in order to express their full personality but are generally happy with their birth gender and usually have no wish to permanently alter the physical characteristics of their bodies.

Drag queens and drag kings

Being a drag king or drag queen is about the occasional portrayal of a different gender with an emphasis on performance and fun. The persona they portray is therefore usually a dramatic or humorous one. Drag performances may take place on stage

but also informally during parties, carnivals and other events. Most people who enjoy being drag kings or drag queens have gender identities that completely match their birth gender and most do not consider themselves to be transgender.

Gender identity and sexual orientation

Put simply, gender refers to who you are, while sexual orientation refers to who you are attracted to.

Transgender people can be straight, gay/lesbian or bisexual just the same as everyone else.

Trans 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 people of more than one gender or regardless of gender.

Likewise, trans 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 people of more than one gender or regardless of gender.

Some people do not find the terms lesbian, gay, bisexual or straight adequately describe their sexual orientation.

Tackling discrimination and promoting equality

Many trans people face harassment and discrimination throughout their daily lives – while walking in public places, while being customers and service users, and, crucially, in employment. As a result of campaigning, legislation is gradually being strengthened to give trans people more protection. With this lever, many employers and service providers have been working to improve their understanding of trans people's experiences and needs.

What the law says

The Equality Act 2010 protects people who are proposing to undergo, undergoing or have undergone a process (or 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. So, for example, a trans person who decides to permanently live in a new gender role simply by changing their name and gender pronouns without undergoing any medical procedures would be covered. It is a personal process of moving away from one's birth gender to one's self-identified gender. A person remains protected, even if they decide not to proceed further or change their mind.

Someone who is non-binary is protected if they decide to undergo any part of a process of gender reassignment away from their birth assigned gender but don't end up living fully in the other binary gender. Protection is also provided where, as part of the process of reassigning their sex, someone is driven by their gender identity to cross-dress, but not where someone chooses to cross-dress for some other reason.

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 protects people at work and when using services.

The act specifically outlaws harassment. It does not matter whether or not a harasser intended their behaviour to

be offensive, the effect is just as important. Harassment does not have to be targeted at a particular person who is known or thought to be trans. It is enough that transphobic language, imagery, 'jokes' or actions violate a person's dignity or create a hostile environment. Significantly, the viewpoint of the person experiencing harassment must be taken into particular account, alongside other factors, when deciding if harassment has taken place.

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 and create an intimidating or offensive environment.

The Equality Act 2010 places a duty on public employers to take positive steps to eliminate discrimination, foster good relations and promote equality for trans people. Transgender equality should be part of equality impact assessment and equality objectives.

In spite of advances, there are still some gaps in legal protection. These are particularly for transgender people who do not intend to transition, for example, cross-dressing people.

UNISON is calling for such gaps to be closed.

Legal change of name and gender

All people are entitled to change their name and title – Mr, Miss, Ms, Mx – at any time. People can change their forename and/or family name, add names or rearrange existing names. There is no set legal procedure that they need to follow in order to change a name. They can simply start using the new name.

Transsexual people usually permanently change their name once they have reached the stage in their transition where they are living full-time as the gender that matches their gender identity. This is often before they have started hormone treatment or had any surgery.

Transgender people who do not intend to transition may also permanently change their name, often to a gender neutral androgynous name. Alternatively, they may use a different name just among friends – in a similar way as many non-trans people use a shortened version of their name among friends. It is perfectly legal for any trans person to use two different names and to have some documents in each name, so long as they are not doing so to financially defraud anyone.

There are some circumstances, such as applying for a passport or getting a bank account switched to a new name, when written evidence of the change of name is likely to be required. This could be a letter from a professional person (for example their doctor), a statutory declaration or a deed poll. The easiest and cheapest method is a statutory declaration. A solicitor, notary public, or other officer of a court authorised by law to administer an oath needs to witness them signing it. They should also ask the solicitor or notary public to make several certified photocopies for them. The cost should be less than £10.

To change the gender on a UK driving licence or UK passport, it is not necessary to have started hormone treatment or to have had any surgery. All that is needed is a statutory declaration and a letter from a doctor stating that the person is transsexual. Changing the gender on a UK driving licence or UK passport does not change the person's legal gender. A person's legal gender is tied to their UK birth certificate.

The Gender Recognition Act 2004 enables trans people to get their UK birth certificates and legal gender changed. The person can apply to the Government's Gender Recognition Panel for a Gender Recognition Certificate. If they are successful in their application, the law will recognise them as having all the rights and responsibilities appropriate to a person of their acquired gender.

Full information about the application procedures, detailed guidance on the legal effects of Gender Recognition, and application forms are available from gov.uk – search for 'gender recognition'.

To apply for a Gender Recognition Certificate under the standard application process the person needs to demonstrate that:

- They are at least 18 years old.
- They have lived fully for the last two years in their acquired gender and that they intend to live in their acquired gender for the rest of their life.

Employment rights

The following information will assist reps in supporting and representing trans members, but also provides best practice guidance to raise with the employer.

There is absolutely no requirement for a trans person to disclose their gender history as a condition of employment. However, if they do choose to talk about it, it would be unlawful to use this as a reason for not offering them the job. Similarly, it is unlawful to dismiss someone for not disclosing their gender history, or for disclosing this at a later date.

Trans people should have access to 'men only' or 'women only' areas according to the gender in which they live. The time of change will usually be the point at which the person attends work in the gender with which they identify. It should never be dependent on any surgical status. It is unacceptable to force people to use separate facilities, for example a unisex wheelchair accessible toilet, because they are trans.

There is more information on employment rights, including how to support a member transitioning at work, in UNISON's factsheet *Transgender Workers' Rights*, which is on the web at unison.org.uk/out or available from UNISON's national officer for LGBT equality (see page 10).

Supporting and representing trans members

All trade union reps need to be willing and able to assist trans members to get equal and non-discriminatory treatment at work. Further support and information is available to help you to assist trans members: ask your

branch or regional equality officer, contact UNISON's national officer for LGBT equality or the trans organisations listed on page 11.

Confidentiality

It cannot be stressed enough that everyone has the right to privacy. A person's trans status must always be treated with the same high level of confidentiality as any other sensitive personal information.

Some people may be happy to have certain people know they are trans, but not others. Therefore, even if they appear open about their trans status, always leave it up to the trans person to decide who they wish to tell. Revealing that someone is trans ('outing' them) not only violates their right to privacy, it places them at risk of discrimination and harassment. It can even place them at risk of physical or sexual assault.

The Gender Recognition Act 2004 defines any information relating to a person's gender recognition application as 'protected information'. It is a criminal offence (with a £5,000 fine) for anyone acquiring this protected information in an 'official capacity' to disclose it to a third party without the trans person's consent. There are only a very few exceptions, for example if the information is required by the police for the prevention or investigation of a crime.

Information acquired in an 'official capacity' includes information gained:

- as an employer, or prospective employer of the person to whom the information relates or as a person employed by such an employer or prospective employer
- as a member of the civil service, a police constable or the holder of any other public office or in connection with the functions of a local or public authority or of a voluntary organisation
- in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.

It also includes information gained through trade union work or by simply being a colleague. Maintain

confidentiality and always get the member's written permission before discussing their case with any other trade union reps if this could identify them. Telling others without the member's permission could result in a criminal conviction and a £5,000 personal fine.

Disclosure

Employees and volunteers may have to undergo criminal records checks if they will be working with children or vulnerable adults. Disclosure forms contain a section for declaring previous names but instead of putting previous names on the actual form, the respective bureaux have created special procedures to enable transgender people to give them details of any previous names in a confidential manner. This protects the trans person's privacy with employers while still enabling the necessary checks against previous names.

There is more information on this in UNISON's bargaining factsheet on transgender workers' rights (see page 10).

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. Don't let any natural curiosity about trans people override your 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. This is the case even if you are also a trans person. If someone wants to share personal information with you then they will do so in their own time – do not put them on the spot.

Trans individuals are not obliged to be a public spokesperson for all trans people, so don't expect them to want to talk about the subject anywhere at any time. If you have questions you want to ask, which you think are

appropriate, phrase them politely and choose a suitable time. If the person says they would rather not discuss something, don't pressurise them.

Use of pronouns

If someone wants to change the pronoun (usually he, she or they) used to refer to themselves, it is important that you understand how important it is to them that you respect this, even if you initially find it difficult. Deliberately using a different pronoun to the one they prefer will be experienced as judgemental and hurtful.

If you are speaking briefly with someone and are unsure how they wish to be addressed, it is best not to use gendered terms. If the interaction is longer and you are unsure, ask them politely which pronoun they prefer.

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.

Occasionally, a person may prefer one pronoun and name in some situations, and a different name and pronoun in others. It is still just as important to get it right. If you are unsure, ask them again, don't just guess. It is also important not to link the names together as that could lead to them being outed.

When writing about a trans person, do not belittle their identity by putting their preferred name or pronoun in quotes or italics as this suggests their identity is less valid than everyone else's.

If someone close to you is trans

It's not always easy for colleagues and friends to deal with the news that someone close to them is trans.

You will most likely maintain and strengthen your relationship with them, if you:

- recognise how important your friendship, acceptance and support are to them
- remain friendly and considerate even if you experience discomfort with the situation at present
- listen without judgement, anger, argument or confrontation
- learn more about their situation and struggles – show that you care enough to make an effort to read, ask questions, and educate yourself
- try to communicate. Don't shut them out. Keep talking to them even if at first your conversations feel awkward
- trust that what they are doing is right for them, that they have not made decisions frivolously but after years of consideration
- use their preferred name and pronoun correctly and treat the person in keeping with their gender identity
- appreciate that their basic character, temperament, and personality will most likely remain the same as before, with all admirable qualities intact.

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.

Further information

UNISON

UNISON is the UK's largest public service trade union. We have a long and proud history of working for trans equality and a well established network of lesbian, gay, bisexual and transgender members who meet locally, regionally and nationally.

In addition to branch and regional LGBT groups, UNISON has a confidential national transgender caucus that any trans member can join by emailing UNISON at out@unison.co.uk

Members do not have to come out at work as trans to be able to attend LGBT or trans union events. However, they will only know about them if all union reps publicise them widely on noticeboards, in e-bulletins and online.

For further information contact:
UNISON national LGBT equality officer
Membership participation unit
130 Euston Road NW1 2AY
Tel: 0845 355 0845
Textphone: 0800 0 967 968
Email: out@unison.co.uk
unison.co.uk/out

Other UNISON resources

Transgender Workers Rights is a bargaining factsheet with information about the rights of transgender people at work, including the law and best practice, support for members undergoing gender reassignment and checklists for negotiating. It can be downloaded from the UNISON website.

Trans recruitment leaflet

This leaflet is aimed at trans people and groups and can be ordered by UNISON branches from the UNISON online catalogue via the website, stock reference 2578.

Equality and Human Rights Commission

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights in England, Scotland and Wales. It is a statutory body which enforces equality legislation and encourages compliance with the Human Rights Act 1998.
equalityhumanrights.com

Equality Advisory and Support Service

Advises and assists on issues relating to equality and human rights, across England, Scotland and Wales.
Tel: 0808 800 0082
Textphone: 0808 800 0084
equalityadvisoryservice.com

Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland's mission is to advance equality, promote equality of opportunity, encourage good relations and challenge discrimination through promotion, advice and enforcement.
Tel: 02890 500 600
Textphone: 02890 500 589
Email: information@equalityni.org
equalityni.org

Trans organisations

Scottish Transgender Alliance

The Scottish Transgender Alliance provides public services and employers in Scotland with training and good practice guidance on transgender equality issues. It also works to build the capacity of transgender support groups in Scotland. Funded by the Scottish government equality unit.

Equality Network
30 Bernard Street
Edinburgh EH6 6PR
Tel: 0131 467 6039
Email: info@scottishtrans.org
scottishtrans.org

Gendered Intelligence

Gendered Intelligence delivers workshops and creative programmes to improve the quality of young trans people's lives and generate debate around gender. They deliver training to raise awareness of young trans people's needs and bring trans people and professional services together in partnerships and projects that will benefit the trans community.

genderedintelligence.co.uk

GIRES

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

c/o Melverley
The Warren
Ashtead
Surrey KT21 2SP
Email: admin@gires.org.uk
gires.org.uk

Press For Change

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

BM Network
London
WC1N 3XX
Email: office@pfc.org.uk
pfc.org.uk

Transgender Europe

Transgender Europe works to support and strengthen the trans movement and be a powerful lobby and advocacy organisation for trans rights in Europe and beyond.

Transgender Europe, like UNISON, is a member of the International LGBTI Association, ILGA.

tgeu.org

This guide is for UNISON workplace reps supporting trans UNISON members at work. It gives a background to what it means to be trans followed by practical advice on common workplace issues.

This booklet was written by James Morton, project co-ordinator at the Scottish Transgender Alliance in collaboration with UNISON.

It was updated in November 2015.

Further copies, including alternative formats, are available from out@unison.co.uk or UNISON national LGBT equality officer Membership participation unit 130 Euston Road London NW1 2AY

