



<u>Policy Title</u>	Guidelines and Advice relating to Transsexual Members of Staff
<u>CCMT Sponsor</u>	Head of Human Resources
<u>Department/Area</u>	Human Resources
<u>Section/Sector</u>	Employment Relations Team

CONTENTS:**1.0 Rationale****2.0 Intention****3.0 General Principles****4.0 Guidance, Procedures & Tactics****5.0 Challenges & Representations****6.0 Communication**6.1 [Links to Police National Legal Database/Other](#)6.2 [Implementation Strategy \(Policy Impact Assessment\)](#)**7.0 Compliance and Certification**7.1 [Human Rights Audit](#)7.2 [Diversity Impact Assessment](#)7.3 [Diversity \(Human Resources\)](#)7.4 [Management of Police Information \(MoPI\)](#)7.5 [Community Engagement Standards](#)7.6 [Data Protection](#)7.7 [Freedom of Information Act](#)7.8 [Protective Markings](#)7.9 [Health & Safety at Work](#)**8.0 Monitoring and Review**

1.0 Rationale

Thames Valley Police is committed to equality of opportunity for all staff and ensuring that they are treated with dignity and respect. These guidelines aim to ensure that individuals who are undergoing or have undergone gender reassignment are treated fairly and with respect and dignity.

2.0 Intention

The specific aims of the Guidelines are to:

- Ensure transsexual members of staff undergoing the gender reassignment process are treated with fairness and are not treated less favourably in relation to recruitment, deployment and development.
- Provide management guidance on the status of transsexuals in the UK and the issues which may be faced by those contemplating or undergoing gender reassignment.
- Detail the appropriate procedure to be followed when an individual declares their intention to undergo the gender reassignment process whilst in employment with the Force.

3.0 General Principles

3.1 Definitions

'Transsexual' - People who consider their physical anatomy to be incompatible with what they regard as their true gender role and who need and/or desire to live and function as a person of the opposite biological sex.

'Transsexualism' - Also known as Gender Identity Disorder or Gender Dysphoria.

'Gender reassignment' - Commonly termed 'a sex change' is in fact a change in a person's physical characteristics and appearance. This change is effected by a three stage process of social, hormonal and surgical reassignment through counselling, drugs and surgery to enable transsexuals to fully realise their acquired gender.

The terms 'Transsexual' 'Transsexualism' and 'Gender Reassignment' should not be confused with 'Transvestism,' a condition where a person wears clothing more usually worn by a person of the opposite gender.

3.2 Legal basis

These guidelines are based upon and compatible with the following legislation; the Equality Act 2010, the Sex Discrimination Act (Gender Reassignment) Regulations 1999 and the Gender Recognition Act 2004.

It is unlawful to discriminate against a person for the purpose of employment on the grounds that the person intends to undergo gender reassignment, or is undergoing

gender reassignment or has at some time in the past undergone gender reassignment.

3.3. Transsexualism and the process of Gender Reassignment

Treatment of transsexualism is carried out by a specialist and may take a matter of months or a period of years. Preliminary diagnosis is followed by hormone therapy and typically after around six months the physical appearance of the individual will begin to change. If an individual has not yet changed the gender in which they present, they may start to do so at this stage, though the individual may maintain their birth gender role at work for rather longer. The individual may then start to present full time in their acquired gender; their name and other records (e.g. driving licence and passport) may be formally changed. The individual may spend a period of time living in their acquired gender whilst continuing to undergo hormone therapy and receiving counselling; this period is often referred to as the “real life test”. Following this period and if there are no extraneous delays, for example funding problems or hospital waiting lists, the individual may then undergo gender reassignment surgery.

The extent of any surgical procedures will vary according to the needs of the individual. Most surgical procedures require less than two week’s absence from work, whilst some are more likely to require two or three months. Undergoing the process of gender reassignment can be extremely stressful for the individual concerned and as much support as possible should be offered to the individual throughout their treatment.

3.4 Discrimination against Transsexuals

3.4.1 Discrimination

As well as other forms of discrimination the following types of discrimination also apply to members of staff who are either transsexual or going through gender reassignment:

Indirect discrimination, this occurs when a policy or procedure applies to all staff but disadvantages a transsexual individual.

Associative discrimination, this is discrimination against an individual because they associate with a transsexual person.

Discrimination by Perception, this is direct discrimination against an individual because others think they are transsexual.

3.4.2 Harassment

Harassment of an individual on the grounds of gender reassignment either by his or her employer or by other workers will be considered unlawful discrimination. The force may also be held liable for acts of harassment conducted by individuals who are employed by third parties, such as contractors or agency workers and by external third parties whom the individual is expected to have dealings with during the course

of their employment, an example would be a member of the public who engages in a course of conduct which constitutes harassment of the member of staff in question.

3.4.3 Victimisation

It is unlawful to subject an individual to a detriment as a consequence of that individual having submitted a complaint made in good faith, that they have been discriminated against on the grounds of gender reassignment. This could constitute victimisation. It is also unlawful to victimise someone who gives evidence on behalf of a person who has complained.

3.5 Exceptions from the provisions of the Regulations

In limited circumstances where a person's sex is a Genuine Occupational Requirement ('GOR') it may not be unlawful to discriminate on grounds of gender reassignment.

There are very few instances in which a job will qualify for a GOR on the grounds of sex. However, exceptions may arise such as where considerations of privacy and decency or authenticity are involved. This could include for example a job which requires the post holder work in the presence of people who are in a state of undress. This exception does not apply where members of the appropriate sex are already employed in sufficient numbers to meet the employer's likely requirements without undue inconvenience.

The Force does not consider that there will be many posts to which a GOR will apply but if members of staff are unsure whether a GOR applies to a specific post, advice should be sought from the HR Employment Relations Team.

3.6 The Legal Status of Transsexual Members of Staff

The legal status of transsexuals is governed by the Equality Act 2010 and Gender Recognition Act 2004. A transsexual who has undergone a process of gender reassignment will still have the legal status of their birth gender, however under the provisions of the Gender Recognition Act, persons over 18 can apply for a gender recognition certificate on the basis of living in the other gender or having changed gender under the law of another country outside the UK.

Applications for a gender recognition certificate will be considered by Gender Recognition Panels set up by the Department of Constitutional Affairs and must be granted if the applicant satisfies all the following criteria:

1. has or has had gender dysphoria;
2. has lived in the acquired gender throughout the period of two years ending with the date on which the application is made;
3. intends to continue to live in the acquired gender until death; and
4. has supplied the mandatory evidence set out in the Act. This includes specific medical reports and statutory declarations.

If an application is successful and a full certificate is issued, that person will, for all purposes, be treated as having the status of his or her acquired gender. That person will, for example, be entitled to a new birth certificate reflecting their acquired gender and will be able to marry someone of the opposite gender to his or her acquired gender. In addition, a person who for example, had been born a man and became a woman and who had a full certificate would be entitled to protection as a woman under the Sex Discrimination Act 1975.

However unless the full gender recognition certificate is issued, then the legal status of a transsexual remains that of his or her birth gender, although it is possible for a transsexual without a full gender recognition certificate to obtain other official documents, including a passport, driving license and National Insurance Number under their acquired gender.

3.7 The Legal Position in regard to PACE searches

3.7.1 Searching by transsexual members of staff

Under PACE searches which are physically intimate must be conducted by a person of the same sex as that of the person being searched. Therefore, under the Gender Recognition Act 2004, it will now be lawful for a transsexual who has been issued with a full gender recognition certificate to carry out a physically intimate search on a person of their acquired gender. It would now be unlawful, for a transsexual with a full gender recognition certificate to carry out a physically intimate search on a member of their birth gender.

If a transsexual police officer has not acquired a full gender recognition certificate then carrying out, observing or assisting searches on members of their acquired gender is unlawful, and in so doing on members of their birth gender would be unacceptable. However as such physically intimate searches are conducted extremely infrequently, do not take place outside the station and can easily be delegated to other member of staff the Force does not consider this to be a bar to the employment of transsexuals who do not have full gender recognition certificates as police officers, special constables or custody officers. The transsexual individual will receive personal and appropriate instruction concerning the levels of searches they are permitted to undertake. Where managers and colleagues are aware of the individual's transsexual status they will assist them in ensuring that they are not placed in situations where they could be required to undertake inappropriate searches. Where the individual's transsexual status remains confidential the individual is responsible for informing the supervisory officer that it would be inappropriate for them to conduct the search. These issues should be discussed at the point of recruitment or commencement of the gender reassignment process.

3.7.2 Searching of transsexual people detained in custody

The principles of searching a detained transsexual individual mirror those outlined above in relation to police officers, i.e. any physically intimate PACE search should only be conducted by a member of the same birth sex as the individual concerned, where such a person has a full gender recognition certificate, which would therefore allow him or her to be treated for all purposes as having the status of his or her

acquired gender. In order to minimise distress to the individual concerned, it is recommended a qualified medical practitioner will conduct all physically intimate searches on transsexual detainees where the existence of such a certificate is unclear, in doubt, or unknown. When dealing with detained transsexuals it is important to ensure that their views and the views of the officers involved are considered in relation to searches.

The custody suite should maintain a detailed record, including reasons for the chosen course of action relating to searching. The transsexual individual should be asked to sign the record.

3.8 Personal Data

Personal data and information obtained in connection with these guidelines should be processed in accordance with the Data Protection Act 1998. Those principles relating to the use of sensitive data also apply in respect of personal data.

3.9 Good Practice - Transsexualism in the Workplace

3.9.1 The Role of the Manager

One of the most important factors in the successful management of an individual's transition from one sex to another is to discuss with them how they would prefer to handle the process. Nothing should be done without the knowledge and consent of the individual. Issues which should be considered include:

- Whether the member of staff wishes to stay in their current post during or after gender reassignment or if possible, would prefer to be redeployed;
- The expected timescale of the medical and surgical procedures and the time off required for medical treatment;
- The expected point or phase of change of name, personal details and social gender;
- Whether the member of staff wishes to inform management, colleagues and associates themselves or would prefer this to be done for them;
- Whether training or briefing of colleagues will be necessary and at what point and by whom this will be carried out, advice in this regard should be taken from the HR Employment Relations Team before any action is undertaken;
- What amendments will be required to records and systems;
- Whether a transsexual member of staff is adequately covered by existing policy on issues such as confidentiality, harassment and insurance and if not how these will be amended;
- Agreeing a procedure for adhering to any dress code or uniform requirements;
- Agreeing the point at which the individual will commence using single sex facilities in their acquired gender, for example toilets and changing areas.

3.9.2 Understanding the likely timescale for treatment

It is good practice to discuss as far as possible in advance the time away from work that an individual will need to undergo gender reassignment treatment. Consultations/hospital appointments may require full days away from work in addition to any time required for surgical procedures. Flexibility should be allowed for

individuals to undergo the treatment. It is important to remember that it may constitute unlawful discrimination if an individual is treated less favourably when undergoing gender reassignment treatment than others who are absent from work for other medical reasons.

3.9.3 Informing colleagues

Following discussions the manager and the individual should establish whether the transsexual staff member wishes to inform colleagues of their transsexualism. There is no need or obligation for an individual to disclose their transgender status as a condition of employment, nor is there any obligation on the employer to inform colleagues and the public that a member of staff is intending to undergo, is undergoing or has undergone gender reassignment. It is usually good practice for employers to take responsibility for informing those who need to know but only with the approval of the transsexual person. The transsexual person may wish to personally disclose their status to some or all of their contacts. If this is the case the line manager will need to know when the disclosure is to take place and how much information will be disclosed so that they can provide appropriate support to the members of staff involved. Education should take place on two levels, general information about transsexualism and specific information to enable people to understand the situation of the particular person involved with care being taken to disclose specific information the employer has approval to disclose. At the point of change of gender it is common for transsexual people to take a short time off work and return in their new name and gender role. This can be used as an opportunity to brief others.

3.9.4 Equal Opportunities in Recruitment

It should not be expected that job applicants and interviewees will necessarily wish to disclose transsexual status since many consider it a private matter. Questions in relation to sexual identity or orientation are not permissible during the recruitment process or indeed thereafter.

3.9.5 Health and Safety

Employers should ensure that on-going Risk Assessments are carried out for transsexual individuals. This will ensure that the individual is provided with the correct equipment and Personal Protective Equipment e.g. stab-proof vests are fitted correctly.

3.9.6 Dress Code

It is good practice to allow enough flexibility in the dress code to accommodate the process of transition from one sex to another. For example in the transition from male to female flexibility should be allowed over hair length and style, jewellery and make up, subject to Police Regulations in the case of officers. If the member of staff is working with the public a temporary redeployment from a front facing role may be appropriate if requested. A confidential discussion between the employer and the transgender member of staff may be appropriate to identify any particular needs or requirements in this regard. The Gender Reassignment Regulations do not provide protection for transvestite members of staff, or those who occasionally cross-dress.

3.9.7 Use of Single Sex Facilities

The line manager and the individual should agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to another. In the case *Croft v Royal Mail Group plc*, 2003, the Court of Appeal held that an employee who was undergoing male to female gender assignment had not been discriminated against on the ground of sex when her employer refused to let her use the female toilet and instead required her to use a gender-neutral disabled toilet as a temporary measure. In the Court of Appeal's view it was inherent in a situation involving the use of toilet facilities by employees undergoing a sex change that there be a period during which an employer is entitled to make separate arrangements for those undergoing gender re-assignment.

Once the gender reassignment including surgery has been completed it would be discriminatory to prevent the transgender member of staff from using the appropriate facilities according to the sex in which they have permanently reassigned to.

Transsexual members of staff are entitled to expect support from their employer which should include discussions and explanations with other members of the workforce or members of the public about the practical implications of gender reassignment as and when necessary.

3.9.8 Personal Records and References

Where it is reasonable and practical, it is good practice for employers to update their records to ensure that any references reflect current name, title and sex. In some cases it may be necessary to retain records relating to an individual's identity at birth for example for pension or insurance purposes. Access to any records showing the change of name and other details associated with the individual's transsexual status such as records of absence for medical treatment should be restricted to staff who require such information to perform their specific duties.

Breaches of confidentiality should be treated in the same serious manner as disclosure of personal details of any other member of staff.

Transsexual people in employment may choose voluntarily to disclose at a secondary level, for example, answering an equal opportunities questionnaire, this does not mean that blanket disclosure has been granted.

3.10 Dealing with the Media

Given the sensitivity of gender reassignment, there is always the possibility of intrusion from the media. Thames Valley Police needs to be prepared to respond to enquiries regarding a transsexual employee. In the interests of confidentiality the name and specific post of the member of staff should not be revealed. If the identity of a transsexual becomes known to the media, the individual's risk assessment should be reviewed. It may be necessary to protect the individual with additional control measures such as redeployment away from contact with members of the public.

The wishes of the individual must be considered in any response given to the media.

3.11 Pensions

Everyone born after April 1955 now receives a state pension at 65. But women born before 1950 can claim state pension at 60 and those born between 1950 and 1955 can claim it at a point between 60 and 65. Because, for state pension purposes, transsexual people who do not have a gender recognition certificate can only be regarded as the sex recorded at birth, those born prior to April 1955 can only claim state pension at the age appropriate to this sex - that is for transsexual women at age 65 and for transsexual men at 60. It is the responsibility of the employer to take suitable steps to keep confidential the reason for the individual's apparently early or late retirement in this instance.

However a person who has acquired a gender recognition certificate will have to claim state pension at the age appropriate to the acquired gender.

4.0 Documentation of Decisions and Decision Making Process

Documentation of decisions made should be recorded wherever appropriate. However, these documents should be kept as confidential as possible as the data held in these will be sensitive personal data. The data should be processed in accordance with the Data Protection Act 1998.

The Managers role is extremely important when dealing with members of staff who are undergoing the gender reassignment process. Individuals should take part in discussion with their managers and an agreed document outlining the necessary actions should be drawn up and adhered to.

Personal and appropriate instruction will be given to transsexual staff concerning the levels of searches which they can undertake.

The custody suite will maintain a detailed record with regards to the searching of transsexual people detained in custody. These will be signed by the transsexual.

The HR Employment Relations Team can be contacted for further information and guidance.

5.0 Challenges/ Representations

Head of Human Resources
Thames Valley Police HQ
Oxford Road
Kidlington
Oxon, OX2 5NX

6.0 Communication

6.1 Links to Police National Legal Database Other

6.1.1 This policy should be linked to the:

- [Diversity in Employment Policy](#)

6.2 Implementation Strategy

6.2.1 This policy will be published on the Policy and Procedures intranet site, the Thames Valley Police website and the monthly Manager's Briefing.

7.0 Compliance and Certification

7.1 Human Rights Certification

(i) Legal Basis

The legal basis of this policy document is derived from:-

Equality Act 2010

Sex Discrimination Act (Gender Reassignment) Regulations 1999

Human Rights Act 1998

Gender Recognition Act 2004

(ii) Human Rights Articles Engaged

Article 8 – Right to respect for private and family life

Article 14 – Prohibition of discrimination

Audited by (name): G Wyeth

Audited on (date): 24 February 2003

(iii) Prohibition of Discrimination

Application of this policy could discriminate against individuals either directly or indirectly. Article 14 does not provide for a free-standing right to non-discrimination but is applicable only in conjunction with another right conferred upon an individual. Nonetheless this policy shall be applied in the spirit of article 14 and decisions taken as a result of it must not discriminate on any grounds, such as sex, race, colour, language, religion, political or other opinion, nation or social origin, association with a national minority, property, birth or other status such as marital status or sexual orientation.

7.2 Diversity Impact Assessment

7.2.1 This policy is subject to a Diversity Impact Assessment

7.3 Diversity (Human Resources)

7.3.1 In the application of this policy, the Force will not discriminate against any persons regardless of their gender, sexual orientation, race or ethnic origin, religion, age or disability. This repeats what is stated above at para 7.1

7.4 Management of Police Information (MoPI) Compliance

7.4.1 This policy does not affect any of the key business areas as identified by Management of Police Information (MoPI).

7.5 Community Engagement Strategy and Standards

7.5.1 This policy has no community engagement implications.

7.6 Data Protection

7.6.1 Personal information processed in compliance with this policy will be managed in accordance with the provisions of the Data Protection Act 1998.

7.7 Freedom of Information Act

7.7.1 This policy is suitable to be made available to the public and can be published on the Thames Valley Police Freedom of Information Publication Scheme.

7.7.2 It is likely that all information processed in compliance with this policy will be exempt from publication under the Freedom of Information Act by virtue of section 40 (personal data). Specific advice should be sought from the Force Freedom of Information Officer in the event of a request for information.

7.8 Protective Markings

7.8.1 This policy has been assessed as **NOT PROTECTIVELY MARKED**.

7.9 Health & Safety at Work

This policy is to be read in conjunction with the Force Health and Safety Management Policy and Health & Safety Manual, which set out the requirement for documented risk assessment by a competent person, when exposure to a particular hazard arising from workplace or pre-planned policing work activity can be said to be reasonably foreseeable.

8.0 Monitoring and Review

8.1 This policy contributes to the following strategic objectives:

8.2 Policy Review

8.2.1 This policy document will be reviewed every two years. The review will take into account the following criteria:-

- Examples of good practice from other Forces or other organisations
- Representations made by individuals and relevant organisations
- Relevant diversity data

8.2.2 This policy will next be reviewed in November 2013.

For use by the Policy Management Unit Only

Chief Officer Policy Authorisation

Policy signed off by:

Head of Human Resources

Date