

Transgender and your rights under the Gender Recognition Act 2004



Gender Recognition Act 2004

Transsexual people now have full legal recognition in their acquired gender. The Gender Recognition Act enables transsexuals to apply for 'gender recognition', which gives them the right to marry in their acquired gender and get a new birth certificate stating their new sex.

Procedure

To qualify for full legal recognition in your acquired gender, you must apply to a Gender Recognition Panel, showing you:

- Have or have had gender dysphoria; or
- Have had gender reassignment surgery; and
- Have lived in the acquired gender for two years before making the application; and
- Intend to live permanently in your acquired gender

If your application is successful, you will receive a Gender Recognition Certificate (GRC) and all the rights and responsibilities of your new gender, including access to state and occupational pensions and employment rights. You do not have to, or intend to, undergo surgery to get a gender recognition certificate.

Sex Discrimination

As a police officer, once you have gender recognition you must be treated in the same way as others of your new gender, including access to facilities. It is unlawful to prevent you from using the facilities of your new gender or to insist you use your own, separate facilities.

Under the Sex Discrimination Act, it is unlawful for a police force to discriminate against you because of your sex or gender reassignment, or because you are married or in a civil partnership. This applies equally to men and women.

For example, it is unlawful to require a male to female transsexual to work to the age of 65 to get their pension, rather than 60 as for other female officers.

Victimisation and harassment

The SDA also protects you from discrimination, harassment and victimisation because you are going, or have gone, through the process of gender reassignment or intend to do so.

Victimisation is when you are treated less favourably than someone else because you have complained or been involved in a complaint about discrimination. Harassment is when you are made to feel humiliated or intimidated by someone else's behaviour.

Disability Discrimination

You are protected under the Disability Discrimination Act if you have been diagnosed as suffering from gender dysphoria or a similar disorder which is permanent, or likely to last for more than 12 months.

This might include being dismissed because of long term absence on medical grounds while undergoing gender reassignment.

For more information please see our factsheet on "Disability Discrimination".

Lawful Discrimination

There are some very limited circumstances where your force can discriminate for instance, if they can show a genuine occupational qualification (GOQ) for the job to be done by a particular gender.

However, once you have a GRC, it is unlawful to discriminate against you in the same way as it is for anyone else of your acquired gender. This means it would only be lawful to discriminate against a female to male transsexual if it would also be lawful to discriminate against a man (eg. restricting a job involving intimate body searching of women to women applicants).

If a police officer working under a GOQ gets their GRC, the Force may be allowed to remove or transfer them on the grounds they no longer have the required gender of the GOQ.

Time Limits

A claim of discrimination needs to be lodged at the Employment Tribunal within three months less one day of the date of the act of discrimination complained about. This time limit applies even if you are already going through the force's internal grievance procedure.

An act of discrimination which extends over a period of time is treated as having been 'done' at the end of that period. An act may extend over a period of time if it takes the form of some policy, rule or practice.

It can sometimes be possible to argue that a continuing campaign of harassment, or a continuing regime of discriminatory conduct, amounts to one act extending over a period of time.

A Tribunal does have the power to consider a claim that is brought out of time, if in all the circumstances of the case it considers it is just and equitable to do so.

Remedies

If a complainant is successful in their complaint of unlawful discrimination, the Tribunal may grant whichever of the following remedies it considers "just and equitable":

- A declaration on the rights of the parties
- A recommendation that the Respondent takes a particular course of action
- Compensation (plus interest)

Compensation may include awards for injury to feelings, aggravated damages, loss of congenial employment, and any actual and/or future financial loss, for example loss of earnings and pension losses.

There is no limit on the amount of compensation that can be awarded, but a complainant will only be compensated for the losses which they can show were directly caused by the unlawful discrimination as found by the Tribunal.

Contact Us

*If you need further assistance,
please contact your JBB in the
first instance.*

Regulated by The Solicitors Regulation Authority.

Prepared by Russell Jones & Walker Solicitors 2009.

This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek independent formal legal advice. This information was correct at time of going to press October 2009.