



The Bar Council

BAR COUNCIL EQUALITY & DIVERSITY GUIDES GENDER REASSIGNMENT & TRANS

This guide supplements the existing [Bar Council Trans inclusion statement](#) and provides additional information for members of the Bar and their employees.

A draft is also included. Our thanks to chambers for sharing their experience with us.

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BAR COUNCIL TRANS INCLUSION STATEMENT

The Bar Council is committed to promoting and respecting equality, diversity, and inclusivity at the Bar. It is important to recognise that some people are transgender and that not everyone feels that their gender can be defined within the margins of gender binary.

The Bar Council supports:

- Trans, non-binary, and gender fluid barristers
- Trans, non-binary, and gender fluid students who aspire to join the Bar
- Chambers and employers that seek to support, promote, and protect trans, non-binary, and gender fluid pupils, tenants, and employees.

Both the Equality Act 2010 and the Bar Code of Conduct protect individuals from being harassed or victimised because of gender reassignment, sexual orientation, philosophical belief and sex, amongst other protected characteristics.

The Bar Council encourages all chambers to:

- Ensure that they consider the treatment of trans, non-binary, or gender fluid barristers and employees in their:
 - policies relating to equality, diversity, and inclusion.
 - policies relating to bullying, harassment, and victimisation; and
 - training on such issues.
- Have confidential and supportive ways of reporting any experiences of discrimination, bullying, harassment or victimisation of trans, non-binary or gender fluid barristers and employees. The Bar Council also offers resources to help with reporting and addressing these issues, including an anonymous hotline and reporting bullying tool, [Talk to Spot](#).
- Seek to ensure that trans, non-binary, and gender fluid issues affecting chambers are addressed with respect.
- Ensuring discussions about trans and gender critical rights within chambers are carried out in a respectful manner at all times particular with regard to use of single-sex spaces.

We are a Bar of all, for all, and the Bar Council urges chambers, employers, and individual members of the Bar to promote this ethos across the profession.

EQUALITY ACT (EA 2010)

In the Equality Act, gender reassignment is one of nine protected characteristics.

Section 7: Gender reassignment

(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing, or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

The EHRC's Equality Act Statutory Code of Practice on Employment at para 2.24 makes it clear that you don't need to have spoken to a doctor and you don't need to take hormones or have any surgery¹.

Gender reassignment does not necessarily need to involve any medical intervention or surgical procedures, as gender reassignment is considered to be a personal rather than a medical process. It may involve dressing differently, using a different name and pronoun and changing official documentation.

It is important to recognise that someone does not need to have a gender recognition certificate (GRC) to ask to be treated as transgender for most purposes. Non-binary people are covered by the protected characteristic of gender reassignment, although this is yet to be confirmed by appellate authority².

Also that the Equality Act extends pre-existing protections for transgender people by, for example, prohibiting indirect discrimination and removing the need for a transgender person to be under medical supervision to benefit from legal protection.

Note: Many in the trans community do not believe provisions and terminology in the Equality Act 2010 (EA 2010) are sufficient to support a trans person; that terminology used throughout EA 2010 is outdated and does not offer cover for the entirety of the trans community.

The Employment Appeal Tribunal ruled in *Forstater v CGD Europe* that Gender Critical Beliefs *...whilst offensive to some, and notwithstanding its potential to result in the harassment of*

¹ <https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>

² https://oldsquare.co.uk/wp-content/uploads/2020/12/1304471.18-Ms-R-Taylor-v-JLR-Ltd..Final_-Reasons.261120.pdf#page=46

trans persons in some circumstances, fell within the protection under Article 9(1), ECHR and therefore within s.10, EqA (the protected characteristic of religion or belief)³. This means workplaces must be careful not to discriminate against anyone for holding these beliefs.

BSB REGULATION

A barrister must not discriminate ([CD8/rC12 – BSB Handbook](#)).

CD8 You must not discriminate unlawfully against any person [CD8].

rC12 You must not discriminate unlawfully against, victimise, or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender reassignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.

EQUAL TREATMENT BENCHBOOK

Additional guidance that may be useful in this area can be found in the [Equal Treatment Bench Book](#) (Treatment of trans people in court, page 337).

TERMINOLOGY

Sex

In this fast-moving area of law there are competing definitions of sex. Whilst we have identified what we see to be authoritative definitions, strong opinions are often held and expressed about alternative meanings. The EHRC describes the protected characteristic of sex as ‘a man or a woman⁴. The High Court used the definition ‘the sex recorded on someone’s birth certificate or gender recognition certificate⁵. Sometimes referred to as ‘legal

³https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf

⁴ <https://www.equalityhumanrights.com/equality/equality-act-2010/protected-characteristics#sex>

⁵ 9 March 2021: R (Fair Play for Women Ltd) v UK Statistics Authority, etc [2021] EWHC 940

sex' or 'biological sex'⁶.

Gender Identity	The gender with which someone associates themselves ⁷
Gender Expression	How someone outwardly shows their gender (gender identity) ⁸
Gender history	Information about a person's previous gender identity or transgender status
Gender critical	The philosophical belief that sex is immutable and not to be conflated with gender identity ⁹ .
Transitioning	The process where someone proposes to undergo, is undergoing or has undergone a process to reassign their sex ¹⁰ .
Trans or transgender	Describes people whose gender identity differs from their sex recorded at birth. They are umbrella terms covering people who: <ul style="list-style-type: none">• are intending to undergo, are undergoing, or have undergone gender reassignment at any stage• identify as having a gender identity different from their sex recorded at birth and are planning or have had medical interventions, such as hormones or surgery• identify as having a gender identity different from their sex recorded at birth, but who are not planning any medical intervention• The UK government defines a non-binary person as "someone who identifies as in some way outside of the man-woman gender binary"¹¹ i.e., they do not identify as solely male or female - they may define themselves as both, neither or something entirely different and they may or may not have medical interventions to align their body with their non-binary gender identity. This includes people whose gender identity is not entirely consistent with that recorded at birth – e.g., agender, gender fluid, gender queer, etc.

⁶ <https://www.equalityhumanrights.com/sites/default/files/guidance-separate-and-single-sex-service-providers-equality-act-sex-and-gender-reassignment-exceptions.pdf>

⁷ House of Commons briefing <https://researchbriefings.files.parliament.uk/documents/CBP-8969/CBP-8969.pdf> page 7

⁸ House of Commons briefing <https://researchbriefings.files.parliament.uk/documents/CBP-8969/CBP-8969.pdf> page 7

⁹ https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf

¹⁰ <https://www.equalityhumanrights.com/equality/equality-act-2010/your-rights-under-equality-act-2010/gender-reassignment-discrimination>

¹¹ House of Commons briefing paper <https://researchbriefings.files.parliament.uk/documents/CBP-9515/CBP-9515.pdf>

You should exercise caution before using terms such as “transsexual”, “gender reassignment” or “gender dysphoria”, which have specific definitions and should not be used to refer to transgender people or the trans community as a whole.

In addition, language that infers that a trans person or the trans community as “non-traditional”, “atypical” or otherwise not “normal” should be avoided as this may be deemed as bullying and derogatory.

RECRUITMENT OF BARRISTERS, PUPILS AND EMPLOYEES

Any recruitment process must be designed to be inclusive of trans job applicants. Trans job applicants are under no obligation to disclose their gender status or gender history. Applicants should not be asked questions about their gender identity or gender history during the recruitment process (except for the purposes of any equal opportunities monitoring), and they do not need to disclose this if they do not wish to do so. If they voluntarily choose to disclose, this must not in itself be a reason for not offering pupillage, tenancy or employment and should be kept confidential. The gender identity in which a job applicant chooses to present should always be acknowledged and respected.

References should be requested using any applicant’s correct name and gender identity since transitioning and previous names or gender identity should not be mentioned unless the trans person specifically requests this.

Document checks, such as right to work checks and checks on qualification certificates, may be conducted as part of a recruitment process. These may be in a former name for a trans job applicant. If this is the case the process of checking should be handled sensitively and with respect for the privacy of the individual. Any documents containing former names and thereby revealing gender history should be stored securely, kept confidential and only accessed by named persons in accordance with your organisation’s data protection policy. If it is not necessary to retain these documents, then they should be securely destroyed.

EMPLOYMENT AND/OR TENANCY WITHIN CHAMBERS

It is the decision of any individual employee, barrister or pupil as to whether to reveal their gender status and history, and their right to privacy should be respected. Where an employee or barrister/pupil discloses information about their gender status or history, this should be treated as confidential and such information should not be disclosed to any

third party without the individual's consent.

The gender status of any employee, barrister or pupil, or their gender history should not have a bearing on any employment, recruitment, retention or progress decisions or access to benefits, except where it is permitted or required by law.

All records that include details of someone's gender history should be securely destroyed unless there is a specific reason for retaining them. Where there is a need to retain documentation that shows the person's gender history, it should be stored securely, kept confidential and only accessed by named persons in accordance with the organisation's data protection policy.

TRANSITIONING EMPLOYEES, BARRISTERS OR PUPILS

There is no right or wrong way for a trans person to transition. It is important to support each trans barrister, pupil, or employee in making their own decisions on the transition process and the time it takes.

If a trans barrister, pupil, or employee advises their manager, head of chambers and/or pupil supervisor that they intend to transition at work, their manager, head of chambers and/or pupil supervisor should aim to make the process as smooth as possible and take steps to ensure they are supported and respected appropriately.

A checklist of things to consider developed jointly by a clerk and a member who has transitioned is attached to this document and provides useful guidance.

CONDUCT OF MEMBERS TOWARDS TRANS PEOPLE DURING THE FULFILMENT OF THEIR PROFESSIONAL ROLE

Court users and others should be treated with respect in line with guidance in the [Equal Treatment Bench book](#). The guidance contained within chapter 12 – "Trans People" specifically includes, but is not limited to:

- Respecting a person's chosen name, preferred pronoun(s), and gender identity.
- Respecting a person's choice of clothing provided it complies with the Bar Council's guidance on appropriate dress.
- Challenging inappropriate behaviours by others towards trans people.
- Consideration of any measures which may be required to support a trans person

within the court setting.

- Respecting confidentiality and privacy relating to a trans person and their chosen identity.

GOOD PRACTICE IN CHAMBERS

It is important to ensure trans people are supported. Consider:

- ensuring training courses are inclusive of trans people
- including trans colleagues in publicity and marketing materials if they wish to do so
- ensuring that forms and surveys are inclusive of trans people
- including trans equality as part of any equality agenda and objectives
- including trans equality in equal opportunities and dignity at work training programmes
- investigating complaints of discrimination, harassment, victimisation, bullying or intimidation on the grounds of gender identity, gender expression, gender history or trans status.

FREQUENTLY ASKED QUESTIONS

Q: How should I address someone in court?

A: Refer to the [Equal Treatment Bench Book](#) (ETBB) (See Para 29/page 362)

Para 29 of chp 12/page 339. Fundamental principles of equality and acceptance of diversity demand that no prejudice or difference in treatment is accorded to a person due to their appearance, including their manner of dress. Any person's gender expression and choice of clothing should be respected unless there is an affront to public decency or a clear intention to insult the judicial process. This applies equally to all people, whether transgender or not.

The ETBB highlights that there may be situations where the rights of a witness to refer to a trans person by pronouns matching their "gender" recorded at birth¹², or to otherwise reveal a person's trans status, clash with the trans person's right to privacy. The list of factors to consider include:

Para 26 of chp 12/page 339. For example, a victim of domestic abuse or sexual violence at the hands of a trans person may understandably describe the alleged perpetrator and use pronouns

¹² We recognise the language in the ETBB may be a little confusing and they may mean sex recorded at birth – which reflects more current thinking

consistent with their gender assigned at birth¹³ because that is in accordance with the victim's experience and perception of the events. Artificial steps such as requiring a victim to modify his/her language to disguise this risks interfering with his/her ability to give evidence of a traumatic event.

Q: What if I do not wish to address someone according to their preferred gender identity?

A: Irrespective of a barrister's own philosophical belief, there is an expectation that in the workplace (Chambers/Court etc.), a barrister will comply with guidance as set out in the Equal Treatment Bench Book and will not discriminate ([CD8/rC12 – BSB Handbook](#)).

Q: How should I describe a trans person?

A: You should respect how any trans person chooses to describe themselves. If you are at all unsure, it is best to ask a trans person how they wish to be addressed. Using inappropriate language and terminology can cause offence and distress. Consistently addressing a trans person by their previous name and/or an inappropriate pronoun can be regarded as harassment.

Q: How should chambers manage single sex spaces (e.g., toilets and changing facilities)?

A: Where there are single sex facilities in chambers (for example, toilets or changing facilities), the starting point as to usage is one of inclusion. Where chambers considers issues could arise, for example because of the communal nature of single-sex spaces, it may be appropriate to consult users, but where toilets are simply cubicles or unisex the situation may be simplified. Chambers need to resolve any issues around usage in a respectful manner and ensure they have good, evidenced reasons for limiting usage.

**Bar Council
June 2024**

¹³ We recognise the language in the ETBB may be a little confusing and they may mean sex recorded at birth – which reflects more current thinking.

TRANSITIONING AT WORK POLICY [CHAMBERS POLICY TEMPLATE]

This policy template can be adapted to suit chambers' needs.

Scope of Policy

This policy is designed to support and aid any Barrister, pupil and employee who is considering or has decided to transition.

Transitioning is a term used to describe the process and steps an individual takes in order to live in the gender with which they identify.

[Chambers] recognises that transitioning is a unique process for each individual and that there is no 'right' or 'wrong' way to transition. As such, this policy is designed to be flexible to accommodate each individual's needs.

Transitioning does not require a person to:

1. Go through a specific process or procedure in order to be supported under this Policy. Support will be given to anyone who believes this policy applies to them.
2. Undergo a medical procedure or undertake gender reassignment.
3. Have a diagnosis of gender dysphoria.
4. Share information about their transition with anyone that they do not wish to share it with. However, in order to give the best support as an organisation, information should be shared with specific people, such as the heads of chambers, any appropriate pupil supervisor and/or senior clerk. Any relevant information will be kept in the strictest confidence in line with the person's wishes and the law.
5. Justify why they wish to transition or prove their gender identity.
6. Hold a Gender Recognition Certificate (GRC) in order to rely on this policy and/or have their details changed on any of our databases.

Aims of the policy

The aims of the policy are:

1. To provide consistency in procedures whilst ensuring flexibility to recognise that transitioning is unique to each person.

2. To reiterate **chambers'** support for a trans inclusive environment free from harassment or discrimination.
3. To state that we stand against discrimination, bullying and harassment as a result of a person transitioning.
4. To recognise that trans staff and members contribute a variety of experience to chambers.
5. To direct users of this policy to further support and guidance.

Language

Any individual transitioning and any transgender person has the right to determine how they wish to be addressed or identified, and/or what pronouns they wish to use. **Chambers** respects this right and to do its utmost to ensure that this is fully respected as part of supporting that individual.

The preferred general term for reference to individuals under this policy is "person transitioning" or "transitioning person". Other suitable terms include "trans person" or "trans community", where applicable.

Everyone is encouraged to use these preferred terms.

Informing Chambers

- Any person seeking to rely on the provisions of this policy are requested to notify chambers in writing. However, **Chambers** recognises that this can be difficult for individuals and so the individual can notify either heads of chambers, their senior clerk and/or their pupil supervisor verbally.
- The provisions of this policy will also apply to any one within a set of chambers who may be reasonably expected to be aware that a person within their chambers is trans or transitioning.
- Any communication relating to the provisions of this policy shall be kept in the strictest of confidence unless and until the individual decides that they will transition publicly.

Steps to be taken by Chambers (checklist)

Should any individual notify chambers that they wish to transition or are transitioning, a meeting should be arranged with the barrister, pupil or staff to inform them of the support available and to discuss whatever is necessary or desirable, including but not limited to the following:

1. The creation of an Action Plan to ensure that **Chambers** fully supports the them through their transition. The Action Plan should also consider and address the issues identified below (and any other relevant matters). The Action Plan should include goals/aims, any issues which need to be addressed, the precise action to be taken, recording what has been agreed, the dates by which these steps will be taken and who is to be responsible for carrying them out (no action will be taken without the member or employee's consent).
2. Discussing with the trans person when and how they will present at work in their new gender identity status.
3. Discuss the trans person's preferences and wishes in relation to informing work colleagues and other relevant third party contacts such as clients, customers, contractors and suppliers, and expressly agree with them how and when this will happen, including who will be told, who will tell them and what they will be told (levels of disclosure may vary in detail for different types of work contact), when they will be told and how they will be told (in-person, in writing (by letter and/or email, over the telephone, etc.)
4. Consider leave and/or other breaks in work patterns as required for the person to undergo medical procedures or other appointments.
5. Leave and/or other breaks to ensure that the individual's well-being is met during the early stages of the process (and thereafter) are considered. This should include any leave and/or other breaks to allow the individual to adjust to any new medication (particularly where side effects may affect them).
6. Where applicable, any changes in dress code and supporting the individual's change of dress code by discussing and agreeing how this information will be conveyed to others, including court centres, including when this will happen, who will be told, who will tell them, what they will be told (levels of disclosure may vary in detail for different types of work contact), when they will be told and how they will be told (in-person, in writing (by letter and/or email, over the telephone, etc.). Note that the aim is to ensure that the trans

person is able to comply with court dress and appearance requirements in a way that reflects their gender identity and gender expression.

7. Discussing and agreeing any announcement to colleagues or other individuals and the manner of this announcement including agreeing when this will happen, who will be told, who will tell them, what they will be told (levels of disclosure may vary in detail for different types of work contact), when they will be told and how they will be told (in-person, in writing (by letter and/or email, over the telephone, etc.).
8. Discussing practical arrangements within chambers including matters such as changing of email addresses, modifications to website profiles and regulatory changes, arranging for the organisation's electronic records and security passes to be updated with any new name, title, pronoun or other personal identifiers (such as photographs) to coincide with the date on which the transition at work commences - this may involve creating a new work e-mail address for the employee.
9. Discussing arrangements for the organisation's paper records to be updated where possible and relevant.
10. Discussing whether the trans person may wish to be redeployed on a temporary or permanent basis, e.g., if they are in a client or public-facing role and wish to avoid having to answer intrusive questions about their gender status - **Chambers** will seek to accommodate the trans person's wishes, where possible. Where the person transitioning is a barrister or pupil barrister, this discussion should include:
 - a. Whether they wish to move to a more paper-based practice (if possible) either temporarily during the transition process or permanently.
 - b. Whether they wish to consider working principally in a different region either temporarily during the transition process or permanently (insofar as this is possible in line with the Code of Conduct); and
 - c. Any other adjustment which the person transitioning may require or consider, or which **Chambers** may wish to explore with the person transitioning.
11. Where there are single sex facilities in chambers (for example, toilets or changing facilities), the starting point as to usage is one of inclusion. **Chambers** will seek to resolve any issues about usage in a respectful manner. Where **Chambers** considers issues could arise, for example because of the communal nature of single-sex spaces, it may be appropriate to consult.

Any client's use of single sex facilities will also need to be dealt with in a respectful manner.

12. Any timescales, activities and communications will be driven and led by the person transitioning and no steps will be taken without the individual's approval.
13. All information shared before, during and after the individual's transition will be kept strictly confidential.
14. Meetings will take place as regularly as needed by the person transitioning subject to the availability of the heads of chambers, senior clerk and/or pupil supervisor (or any other relevant person). Meetings will be recorded in writing but such records will be kept strictly confidential and in line with GDPR policies. This will ensure that the transitioning person's wellbeing needs are met and that any adjustments to the action plan can be made in accordance with their wishes and feelings. This will also enable the Action Plan to be amended as things change.

Leave and Flexible Working

Should any person seeking to transition require leave or flexible working arrangements whilst attending appointments or undergoing medical procedures, or simply to promote their well-being during the transition process, chambers will endeavour to accommodate this with reference the flexible working policy [include link].

Confidentiality

Chambers recognises the importance of confidentiality and will support the individual in making decisions about who, when and how they share information about their transition, gender identity or gender expression and will recognise that some individuals may wish to speak openly on the subject whilst others may wish to keep that information private.

In specified circumstances, the Gender Recognition Act 2004 (GRA 2004) prohibits disclosure of the fact that an individual has applied for a gender recognition certificate (GRC) or disclosure of someone's gender before the acquisition of a GRC once granted. Any disclosure in breach of the GRA 2004 constitutes a criminal offence and may be subject to a fine.

Any breaches of confidentiality will be treated seriously.

Training

Chambers will provide regular training to members, pupils and staff and as part of its aim to promote an inclusive environment. Training will be provided to members, pupils and staff around the issues of trans equality, gender identity and gender expression.

Complaints under this Policy

Anyone to whom this policy applies who believes that they been subject to a breach of this policy are entitled to raise that concern. Any grievances should be raised in accordance with chambers' Grievance Policy.

All complaints of under this Policy will be treated confidentially, seriously and promptly.

Review of this policy

This policy shall be reviewed by Chambers, every two years.