

**JOINT AGREEMENT ON GUIDELINES FOR
TRANSGENDER EQUALITY IN
EMPLOYMENT IN
FURTHER EDUCATION COLLEGES**

BETWEEN

THE ASSOCIATION OF COLLEGES (AoC)

AND

**ASSOCIATION FOR COLLEGE
MANAGEMENT (ACM)**

**ASSOCIATION OF TEACHERS &
LECTURERS (ATL)**

GMB

**NATIONAL ASSOCIATION OF TEACHERS
IN FURTHER AND HIGHER EDUCATION
(NATFHE)**

**TRANSPORT & GENERAL WORKERS'
UNION (T&G)**

UNISON

July 2005

1 Introduction

- 1.1 This Joint Agreement on guidance has been developed to equip Colleges to meet their legal obligations under the Sex Discrimination Act (1975), the Sex Discrimination (Gender Reassignment) Regulations (1999) and the Gender Recognition Act (2004).
- 1.2 The Sex Discrimination (Gender Reassignment) Regulations state clearly that no one should suffer discrimination at work on the basis of gender reassignment (See Appendix 1 for glossary of terms). Trans people are protected from direct and indirect discrimination and from harassment on the basis of their gender identity. Any college that tolerates discrimination against any trans person – by any member of its staff – is therefore potentially subject to legal action under the terms of the Sex Discrimination Act.
- 1.3 The Gender Recognition Act outlines a process by which trans people can apply for formal recognition that they have changed gender. For example, if successful in achieving recognition, they can obtain a new birth certificate.

2 Our commitment

- 2.1 The College recognises that there are possible differences between physical sex and gender identity. The College will at no time discriminate against people on the grounds of transvestitism, transexualism, intersex conditions or any process of gender re-assignment, begun or complete. When this policy refers to 'trans people', it has in mind people living with any of these identities. When it refers to 'gender identity', it covers both the fixed identity of people living in the gender of their birth, and the more fluid identities of many trans people.
- 2.2 The College celebrates and values the diversity of its workforce, and believes that the College will benefit from employing trans people at all levels of responsibility, thus hoping to provide role models for students that identify as trans. The College will treat all employees and students with respect, and seek to provide a positive working and learning environment free from discrimination, harassment or victimisation.
- 2.3 The College will seek not only to eliminate all discrimination on grounds of gender identity, but also to create a working and learning environment based on good relations between all employees, including trans people. To this end, the College aims to include non-stereotypical images of diverse gender identities in materials which it produces. The aim is to create a positive inclusive ethos where issues of stereotyping can be discussed openly, with a shared commitment to respecting diversity and difference, and to encouraging good relations between people with any gender identity.
- 2.4 The College will work towards the elimination of discrimination whether overt or covert, and will seek to ensure that all staff and students including trans people have equal access to all learning programmes and facilities.

3 Our legal duties

The College undertakes to fulfil all the legal duties put upon it by:

- 3.1 The Sex Discrimination Act 1975 and the Equal Treatment Directive (75/117) (in other words, it is unlawful to discriminate against staff, either directly or indirectly on grounds of sex or marital or family or gender identity in access to employment, training, working conditions, treatment at work, promotion or dismissal.)
- 3.2 The Sex Discrimination (Gender Reassignment) Regulations (1999) and the Gender Recognition Act (2004)

Gender Recognition Act 2004 (GRA)

The Gender Recognition Act 2004 gives legal recognition in their acquired gender to transsexual people who satisfy the Gender Recognition Panel (a judicial body of lawyers and doctors) that they:

- Have or have had gender dysphoria, and
- Have lived in the acquired gender for two years prior to the application, and
- Intend to live permanently in the acquired gender.

The panel or the Secretary of State can also apply for medical evidence, marital status and other information, which must be given for an application to be successful.

Following a successful application, a transsexual person will acquire the rights and responsibilities of their acquired gender from the date of recognition.

- 3.3 The wide range of other legislative provision which relates to gender identity, including:
 - The Employment Rights Act 1996
 - The Human Rights Act 1998
 - The Pensions Act 1995
 - The Protection from Harassment Act 1997

4 Meeting our legal duties

- 4.1 The College should not discriminate on grounds of gender identity in the way it recruits and selects staff. (*Where applicable details are to be found in the*

Recruitment and Selection of Employees Policy)

- 4.2 The College should ensure that all of a trans person's rights are met, as are every employee's rights under the Sex Discrimination Act and Equal Treatment Directive.
- 4.3 The College should ensure that trans members of staff have equal access to all forms of training and staff development. *(Where applicable see the Training and Development of Employees Policy)*
- 4.4 The College should ensure that there is no discrimination on the grounds of gender identity in relation to dismissal of staff. In particular, shall a redundancy situation occur; it will ensure that gender identity and gender reassignment are not factors in the selection of those to be made redundant. *(Where applicable see the Redundancy Handling Procedure)*
- 4.5 Harassment is viewed by the College as a very serious offence, which if proven may in certain circumstances lead to the dismissal of a member of staff, or if an employee is harassed by a student, the expulsion of a student. *(Where applicable see the Harassment Policy)*

5 Ensuring equality for trans people

The College values its entire staff equally, and will endeavour to create an environment in which all staff feel equally valued and welcomed.

The College is committed to creating an environment in which everyone is treated equally and with respect. The College aims to eliminate trans discrimination in its structures and employment practices as well as to encourage change in individual behaviour and attitudes, and ensure equality of opportunity and treatment for all staff.

- 5.1 Trans abuse, harassment or bullying (e.g. name-calling, derogatory jokes, unacceptable or unwanted behaviour and intrusive questions) are serious disciplinary offences, and should be dealt with under the appropriate procedure.
- 5.3 Anti-trans propaganda, in the forms of written materials, graffiti, music or speeches will not be tolerated. The College undertakes to remove any such propaganda whenever it appears on the premises.
- 5.4 Trans equality training should be offered as a means of understanding the diversities of trans people and the barriers they face.
- 5.5 The College recognises that there may be a continued need for trans people to access medical treatment, which may include periods away from work. The College will ensure that every provision will be made to facilitate its employee through the stages of gender reassignment. It accepts the need to undertake special measures to ensure genuine equality of access for trans students and staff (see 6).

- 5.6 The College recognises that stereotyped gender roles can be harmful to trans people, who may feel constrained to behave in ways, or work in areas that are traditionally considered appropriate for their registered sex at birth (or appropriate for their role after gender transition). Encouragement and support will be given to staff who are trying to step outside the constraints of stereotypes in any area of the College's work.

6 Provision for adjustment of records and issues of support and duty of care for trans people

The College will respect any request for anonymity. The College will seek to update its records to include the chosen name and sex identified by the individual at an appropriate time.

- 6.1 The College will provide support for staff and students returning after a break caused by medical and surgical treatment.
- 6.2 For staff with significant medical and surgical treatment returning to work after an absence due to the above, the College should treat sympathetically requests to job share, or to move from a full-time to a fractional contract for a specified period.
- 6.3 The College, when producing timetables for teaching staff or work patterns for support staff, will adopt a flexible approach which endeavours, whenever possible to meet the individual needs of staff with medical and surgical treatment recuperation.
- 6.4 The College will ensure that all records of trans staff will not refer to a previous name, and any records made prior to a change of name or gender change will be updated once a Gender Recognition Certificate has been received by the College (See Appendix 2: Record Keeping and CRB Checks).
- 6.5 The College accepts that any unequal treatment of part-time workers may have an adverse impact on trans people, who may be more likely to be found in marginal roles within any institution. To avoid discrimination, the College resolves to adhere closely to the (*Employment of Part-Time Employees Policy*).

7 Transition

The College recognises that for those trans people who wish to undergo full gender transition, there is a long and difficult process during which they have to live their lives under medical supervision. The College recognises that this process can be exceptionally difficult for the individual concerned, and will honour any reasonable requests to make the process easier and more pleasant for the individual involved.

- 7.1 Any member of staff who has taken the decision to go through the transition process can request a meeting with a representative of the College's human resources and their trade union representative, or friend.

- 7.2 The transitioning individual may then request a second meeting with their line manager, a member of the equal opportunities group, a trained mentor, or a member of the College's human resources team. They will also have the right not to have such a meeting.
- 7.3 Prior to this second meeting, if it is desired, all those invited will be sent information about trans issues (such as ECU, Employing Transsexual people in Higher Education, or the publications of the Gender Identity and Research and Education Society or Press for Change or Gender Reassignment - A Guide for Employers).
- 7.4 At this second meeting or afterwards, the individual going through the transition process will have the right to make available to any colleagues the details of appointments, and the dates of hormonal or surgical treatment, if they are planning to go through these processes.
- 7.5 Those involved in the first or second meeting may want to discuss (on this occasion or subsequently) access to toilet facilities.
 - 7.5.1 The employer and employee should agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to the other. This may be, for example, the point at which the individual begins to present permanently in the sex to which they identify.
 - 7.5.2 It is not acceptable to treat a transsexual person as though they have a third sex, i.e. neither male nor female. It is therefore not acceptable to insist on a transsexual employee using separate facilities in the long term, for example an accessible toilet for disabled people.
 - 7.5.3 A transsexual employee should be granted access to 'men only' or 'women only' areas according to the sex in which they permanently present. Under no circumstances should they be expected, after transitioning, to use the facilities of their former gender.
- 7.6 They may also want to discuss identification passes, library cards, contact details, email addresses, formal records, website references, or any other matter raised by the person undergoing transition.
- 7.7 Any individual who is going through the transition process will receive at least the same level of support and protection from management as any other colleague. Any reasonable requests for time off or work on different sites, or alternative duties will be noted, discussed seriously, and if it is at all possible to act on them, that will be done.
- 7.8 While all trans people can expect to have any requests treated in utmost confidence, the College additionally reaffirms its commitment to respond in confidence to any requests made by transitioning staff. It is essential that the person grants permission before their status is discussed with any third party.
- 7.9 The College will not in any way penalise any member of staff for failing to

make their trans or transitioning status known to colleagues or personnel, or for any delays in making this information known. Conversely, the person transitioning should appreciate that they cannot expect the College to make reasonable adjustments on their behalf if the College does not know about their status.

- 7.10 The person undergoing transition will have the freedom to choose a date at which they expect College records to be changed. It may be the day after the first or second meeting, it may be after they begin transitioning or after surgery, or after the receipt of a Gender Recognition Certificate, or any other time. Following their request, all College records will be changed, including personal files, sickness files, progression files, pay roll details, paper files, material held as a paper or electronic database. No changes will be made without prior request. No reasonable requests will be turned down.
- 7.11 The person undergoing transition will have the right to request a meeting with staff in their area of work at which their status as a transitioning person is explained. At this meeting, if it happens, a representative of the College will express their support for the individual concerned. The transitioning person may choose if they wish to answer questions from other members of staff.
- 7.12 If such a meeting takes place, then all those involved will be bound by the same rules of confidentiality, given above. The status of the individual undergoing transition will not be discussed with any third party without the prior consent of the person who is changing gender.
- 7.13 Following the date chosen by the transitioning individual, any remaining information will be changed to reflect their new gender identity, staff lists organisational charts, post trays, door signs, and all other relevant information will be changed. The name of the individual who has undergone transition will not be inappropriately withheld from any list- omission can be embarrassing.
- 7.14 The College will recognise all medical documents produced by any medical practitioner relating to the transition. In general, the College will take the word of the person transitioning. No attempt will be made to expect medical proof of conditions such as gender dysphoria. Nor will any person transitioning be subject to intrusive questioning by any representative of the institution.
- 7.15 All Gender Recognition Certificates will be honoured.
- 7.16 No trans person will suffer discrimination at any stage in the interview process, or for selection for promotion, or at any other time.
- 7.17 While the College will deal sympathetically and speedily with any reports of bullying and harassment against any member of staff or student, irrespective of gender identity, this commitment is reaffirmed for trans staff and students, including those undergoing transition.

8 **Monitoring (optional)**

The College is already obliged to carry out an annual process of equality monitoring. The College should ensure that monitoring includes all areas such as race, sex, disability and gender identity.

9 **Division of responsibilities**

9.1 Governors are responsible for ensuring that:

- The College's strategic plan includes a commitment to equality for trans people
- Equality training, including in trans issues, will feature as part of the College's strategic plan
- They are aware of the Corporation's statutory responsibilities in relation to gender reassignment legislation as an employer and service provider
- They receive and respond to monitoring information.

9.2 Managers are responsible for ensuring that:

- The College Principal/Chief Executive and Senior Management Team are responsible for taking the lead in creating a positive, inclusive ethos that challenges discriminatory behaviour on the part of the managers, staff or learners
- They are aware of the College's statutory duties in relation to all legislation relating to trans people
- All aspects of College activity are sensitive to gender identity
- The procedures for the recruitment and promotion of staff enshrine best practice in equal opportunities
- The College's publicity materials present appropriate positive and non-stereotypical messages about trans people
- Appropriate training and development is provided to support the appreciation and understanding of diversity, and where appropriate the college should train a member of staff in the implementation of this Joint Agreement in order that they can act as a mentor for trans staff.

9.3 Staff are responsible for ensuring that:

- They are aware of the College's statutory duties in relation to gender reassignment and other relevant legislation

- They challenge discriminatory behaviour by learners, placement providers, outside contractors or other members of staff
- The College and each of its individual staff confront discrimination, whether witting or unwitting, whenever it occurs.

10 Publicising our policy and progress

10.1 To the public (including learners, placement providers and staff):

- Our commitment to equality on grounds of gender identity will be highlighted in our prospectus, annual report and annual financial statement
- A summary of the results of our monitoring information (where applicable) will be included in our annual report and annual financial statements, where this does not breach individual confidentiality.

10.2 To staff:

- All staff will have access to or receive a full copy of the policy
- The staff induction programme will highlight the College's commitment to equality to all, action to be taken by staff who suffer discrimination and the action to be taken against any perpetrators of such discrimination

11 Complaints

11.1 The College will seek to provide a supportive environment for those who make claims of discrimination or harassment.

11.2 Acts of discrimination (direct or indirect) on the grounds of gender identity, harassment, victimisation or abuse will be treated as a serious disciplinary offence.

11.3 Staff who feel they are being discriminated against on grounds of gender identity by other members of staff should raise the matter under the Grievance/Harassment Procedure, which will, if the accusation is upheld, be treated as a serious disciplinary offence.

11.4 If, in the course of their work, College staff suffer discrimination from members of the public, the College will take appropriate action and provide appropriate support.

11.5 Any discriminatory behaviour directed against staff by students will be dealt with under the student disciplinary procedure.

12 Review and consultation

- 12.1 This Joint Agreement Guidance will be reviewed on a regular basis in accordance with legislative developments and the need for good practice, in the College.
- 12.2 As part of the review the College will seek and take into account the views of stakeholders including learners, work placement providers, the local consultation/negotiating arrangements within the College, and appropriate equality bodies.

13 Implementation



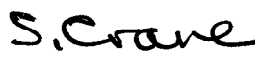

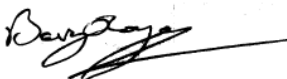
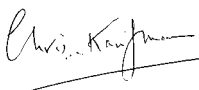

- 13.1 The College, working in partnership with the recognised trade unions and employee representatives, will seek to ensure that all staffing policies and procedures (such as the Recruitment and Selection Procedure) are non-discriminatory, and that monitoring and positive action processes are regularly reviewed and monitored.
- 13.2 This Joint Agreement on Guidance should not be read in isolation, but cross referenced with other College policies and the policies agreed by the Corporation.

14 Definition of Joint Agreement

- 14.1 The Agreement on this guidance is intended as a recommendation to Colleges relating to Gender Recognition.

**JOINT AGREEMENT ON GUIDELINES FOR TRANSGENDER
EQUALITY IN EMPLOYMENT IN FURTHER EDUCATION
COLLEGES**

SIGNATURES OF THE PARTIES TO THIS AGREEMENT

AoC	
ACM	
ATL	
GMB	
NATFHE	
TGWU	
UNISON	

Date of Commencement of this Agreement:

21 March 2006

Appendix 1: Glossary of terms

Acquired gender:

The new gender of a person who has had their gender reassigned and/or legally recognised.

Gender:

The overwhelming majority of people have a gender that accords with their anatomical sex.

Gender consists of two related aspects: gender identity, which is a person's internal perception and experience of their gender; and gender role, which is the way that the person lives in society and interacts with others, based on their gender identity.

Gender is less clearly defined than anatomical sex, and does not necessarily represent a simple 'one or the other' choice. Some people have a gender identity that is neither clearly female nor clearly male.

For the purpose of the law, however, people can only be male or female.

Gender dysphoria:

A person with gender dysphoria may feel that they have a gender identity that is different from their anatomical sex. As a result, they may experience anxiety, uncertainty, or persistently uncomfortable feelings about their birth gender.

Gender reassignment:

A process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex.

Gender Recognition Certificate:

A full Gender Recognition Certificate shows that a person has satisfied the criteria for legal recognition in the acquired gender. It will be issued to a successful applicant if he or she is not married in a civil partnership. From the date of issue, the holder's gender becomes the acquired gender for all purposes. An interim Gender Recognition Certificate will be issued to a successful applicant if he or she is married at the time of application. The

interim certificate is issued to allow the applicant and his or her spouse to end their marriage easily. It has no legal significance beyond this use. When the marriage is ended, a full Gender Recognition Certificate will be issued to the successful applicant.

Sexual orientation:

An orientation towards persons of the same sex (lesbians or gay men) or an orientation towards a person of the opposite sex (heterosexual) or an orientation towards persons of the same sex and the opposite sex (bisexual).

Transsexual person:

A person who through the use of hormones and surgery takes on the characteristics of the opposite sex and lives permanently in the gender role appropriate to that sex. They do not undergo full genital reassignment surgery.

Transgender person:

A person with gender dysphoria who feels a consistent and overwhelming desire to live their life in the gender that is opposite to that assigned them at birth.

Transvestite:

The clinical name for a cross-dresser. A person who dresses in the clothing of the opposite sex. Generally, transvestites do not wish to alter their body and do not necessarily experience gender dysphoria.

Trans:

A generic term generally used by those who identify themselves as transgender, transsexual or transvestite. The term should only be used as an adjective.

Appendix 2: Record keeping and CRB checks

Record keeping

The employer should ensure that all documents, public references (such as telephone directories, prospectuses, web biographies) and employment details reflect the acquired gender of the person. This will prevent any breach of confidentiality.

Where documents have been seen and copies taken at the point of starting employment (such as a birth certificate) then every effort should be made to replace those with equivalent documents in the new name and gender.

In some instances, however, it may be necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes prior to obtaining gender recognition. However, once a person has obtained a Gender Recognition Certificate these **MUST** be replaced with new details.

Access to records showing the change of name and any other details associated with the individual's transsexual status, (such as records of absence for medical treatment) must be restricted to staff who need the information to do their work.

They could include people directly involved in the administration of a process, for example the examining medical officer, or the person who authorises payments into a company pension scheme. They do not include colleagues, clients or line managers.

Once a person has obtained a Gender Recognition Certificate there must be no disclosure of this information, not least because it may be a criminal act subject to a maximum £5 000 fine. Breaches of confidentiality should be treated in the same serious manner as disclosure of personal details of any other member of staff (see below).

Transsexual people in employment may choose voluntarily to disclose information at a secondary level, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed as further disclosure must not be made without the express permission of the transsexual person.

When can the employer make a disclosure?

The GRA defines information about a person's application for gender recognition and a person's gender history as 'protected information'.

This means that if an employer or employee acquires the information in the course of official duties, it is a criminal offence to disclose it. It is not an offence, however, to disclose 'protected information' if the person cannot be identified or if the individual gives their consent.

Any records held on a transsexual employee in their birth gender and those held on the same person in their acquired gender should be kept confidential, with only

specified staff having access to them. The Data Protection Act 1998 limits the purposes for which information may be kept, and when that information is no longer useful it must be destroyed.

CRB

The Criminal Records Bureau provides a service called 'Disclosure.' By providing wider access to criminal record information, the CRB helps employers in the public, private and voluntary sectors identify candidates who may be unsuitable for certain work, especially those positions that involve contact with children or other vulnerable members of society.

What is the clearance procedure?

To enable it to do its job, the CRB has to be aware of any previous names and/or gender of prospective employees. However, the bureau has now devised a process which allows transsexual people to pass details onto the CRB without first revealing them to the employer.

What do transsexual applicants have to do?

The CRB has developed a separate application procedure, which allows transsexual applicants to exclude previous names from the Disclosure Application form. However, applicants will still be required to send details of their previous identity in a separate letter directly to the 'Sensitive Casework Manager' within the CRB. The CRB will then check the data sources held against both current and previous names.

This avoids the need for disclosure about gender history or former name to the employer or voluntary body at the application stage, but allows the CRB to carry out the requisite checks against any previously held identities.

It should be noted that where a conviction or (in Enhanced Disclosure cases) other relevant information has been recorded in a previous name, this will be revealed on the Disclosure and as such details of any previous identity may be revealed. Where there are no convictions recorded, the details of any previous names that have been provided directly to the CRB will not be revealed on the Disclosure.

Transsexual applicants wishing to take advantage of this separate procedure should contact the CRB for further details.