



Advising Transgender Clients

Introduction

On Friday October 12th the Scottish Transgender Alliance, supported by the Law Society of Scotland, held Scotland's first legal seminar on transgender law at the University of Edinburgh's Centre for Professional Legal Studies.

Over 40 people attended from a range of law firms and public and voluntary sector organisations, and the majority of delegates were solicitors. Speakers presented on various human rights and equality issues currently affecting trans people, the type of legal advice trans clients are likely to seek, and how providers of legal advice can make their services as trans inclusive as possible.

We received extremely positive feedback about the seminar and began to build up a network of solicitors and advisors with an understanding of the needs of trans clients.

James Morton, STA Co-ordinator – welcome and introduction

James provided the following definition of the terms transgender, or trans, people:

The Scottish Transgender Alliance uses the terms transgender people and trans people as 'umbrella' terms to describe a diverse range of people who find their gender identity does not fully correspond with the sex they were assigned at birth.

Included under the trans umbrella are: Transsexual people, Non-binary gender people, Cross-dressing people, and Intersex people.

Transsexual people are usually differentiated from other trans people by their strong need to undergo gender reassignment to live as a different gender from the sex they were assigned at birth. A trans man is someone who was assigned female at birth but self-identifies as a man, while a trans woman is someone who was assigned male at birth but self-identifies as a woman.

The process of gender reassignment, or transition, may include medical treatment such as hormones and surgery but not everyone follows the same path and some trans people might not undergo any medical intervention.

After living as the gender they identify as for two years transsexual people can apply for a gender recognition certificate under the Gender Recognition Act 2004. This means that the gender they identify as becomes for all purposes their legal gender. For a number of reasons, including the fact that the Act currently requires married applicants or those in a civil partnership to divorce or go through dissolution, and difficulty in proving that they have indeed been living in their acquired gender for two years, some people may not be able to access gender recognition. Importantly, the Act does not require applicants to have undergone any medical intervention.

Non-binary gender people do not feel comfortable thinking of themselves as simply either men or women. They see their gender as more complex and might feel they are male and female or reject these binary labels altogether. Some non-binary gender people may decide to change their name or use gender-neutral pronouns and some may undergo some parts of the transition process similar to transsexual people so their physical bodies more closely match their gender identity.

Cross-dressing people feel more comfortable expressing themselves in particular masculine or feminine clothes either occasionally or more regularly.

Intersex people are born with external genitals, internal reproductive systems or chromosomes which are in between clearly male or female. However most will self-identify clearly as men or women. As medical professionals often decide which sex to assign an intersex baby some may grow up not identifying as the gender they were assigned and may need to go through a similar process to transsexual people.

Nathan Gale – Intro to trans

Nathan began by describing the general barriers that trans people may experience when trying to access legal services:

- Prohibitive cost and lack of legal aid
- Fear of discrimination/prejudice/lack of understanding
- Not having ID bearing their correct name/gender
- Services not advertising that they are trans inclusive/have trans expertise
- A lack of access to information about legal rights/how to pursue a claim

The following case study was then used to show these barriers in action:

Potential Client

Colin, 27

Is a female to male trans man. Works as an admin assistant.



At work his colleagues are sharing jokes about the trans man who recently won Big Brother.

Colin finds the jokes offensive and he feels very uncomfortable at work.

He has complained to his boss but jokes are still being made.

As far as he knows his colleagues don't know that he is trans.

He doesn't want to draw attention to himself by complaining again and is thinking of resigning.

However, after looking at the STA website he thinks he may be entitled to a legal remedy





But Colin has no idea how to go about finding a solicitor

He does not feel confident about seeking legal advice.

He goes to the solicitor used by his parents when they sold their house.

They don't do employment law but give him the details of a firm that specialise in employment discrimination.

After Colin has explained everything the solicitor tells him that he doesn't have trans expertise.

The solicitor suggests that he try somewhere else.

Colin is very put off by the thought of having to discuss his complaint with another person.

Especially because it is very difficult for him to discuss his trans history with a stranger in an environment he finds intimidating.



He finds another firm online. You have to call to make an appointment.

Colin doesn't like speaking on the phone because his high voice means he is sometimes mis-gendered.

He calls and has to correct the receptionist when she calls him madame.

The solicitor asks Colin personal questions about him being trans - when he transitioned, his previous name, what medical interventions he has had.

Although he feels very uncomfortable Colin feels he needs to answer.

He is advised that the fact that he is trans may be taken into account for assessing the reasonableness of his complaint.

She talks to him about the employment tribunal and explains that him being transgender would probably come up if he proceeded with a claim.

Colin decides he doesn't want to go through any of what has been described to him.

He is frustrated and decides not to take things any further.

The following day he hands in his notice at work and starts to look for another job – this seems less distressing than pursuing legal action.



How can we begin to break down these barriers



Make sure people know that you are willing to take trans cases by making appropriate references in your materials and website.

Don't make assumptions about the gender history or the experiences of trans clients.

Be respectful of everyone's gender identity.

Don't ask unnecessarily intrusive or personal questions about a person's physical body.

If you are unsure of a client's gender identity avoid using gendered terms - it's also ok to ask how they would like to be addressed.

Nearly all solicitors have limited experience of taking trans cases.

The legal principles are not unique so you don't have to be a trans expert to take a case.

We can help link you up with additional trans specific knowledge.

Understand that it is extremely important to many trans people that their trans identity is confidential. Work with clients to find ways to deal with this to ensure their privacy and safety e.g. restrictive reporting measures.

Neil Stevenson, Law Society of Scotland – How can the Law Society drive trans inclusivity in legal service provision?

Neil began by outlining the dual roles of the Society as regulatory and representative body. He highlighted the diversity within the profession, stating that between 3 and 4% of all members identify as lesbian, gay or bisexual and around 4% live and/or work as a different gender to that which they were assigned at birth.

Delegates were encouraged to engage with the Society in order for the body to find the most effective ways to support its members to be trans inclusive. Neil discussed the forms that such support could take, including: on-line resources; training courses; and awareness raising events.

Neil went on to set out both the equalities case and the business case for solicitors to provide a trans inclusive service. In terms of the latter he shared research showing that on average LGBT people travel 100 miles to obtain legal services. The importance of ensuring that marketing material reflects the fact that trans clients will be treated with dignity and respect was discussed as a way of enabling trans clients to make an informed choice when seeking legal advice.

Lynn Welsh, EHRC – Advice from the EHRC (see power point)

Helen Dale – A plea in law for equal marriage (see hand out)

Having won the Law Society of Scotland's essay writing competition with her essay on equal marriage Helen addressed the seminar on why she had chosen the topic. Helen shared her background as a commercially-minded person and the fact that she did not usually involve herself in social justice issues. It was frustration at what she saw as arguments lacking any legal merit, and also the experience of a close friend who had gone through gender reassignment but would have to divorce to receive gender recognition, that led her to tackle the issue.

Kenneth Norrie, University of Stirling – Securing the rights of trans people to appropriate health care (see power point)

James Morton, Scottish Transgender Alliance – transgender discrimination in employment (see power point)