Being Trans and Protesting

You have the right to have your gender recognised. This guide outlines other key rights and advice for trans people attending protests.

Please note we are in the process of updating the guide – please do get in touch if you have any questions! 07946 541 511.

Transphobia is rife in society. This can mean that some trans people do not wish to put themselves at risk of having to interact with the state – through having to interact with the police – by going on demonstrations. Fear can therefore keep people off the streets: know your rights so you can understand the risks.

We hope that this guide will support you in knowing your rights, so you can make informed decisions about how and when you take action.

This guide covers:

1. Your rights under the Equality Act
2. Our key messages
3. Being stop & searched
4. Being arrested

We know that gender and how people are gendered can be complex and contradictory. The following will not be completely comprehensive.

Please email us at gbcresources@protonmail.com with any comments, questions or suggestions.

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1. Your Rights Under the Equality Act

The actions of the police during stop and search and arrest procedures are governed by the Police and Criminal Evidence (PACE) codes. These are informed by the Equality Act 2010.

Gender reassignment is defined in the Equality Act as a "personal, social and sometimes medical process". Therefore, even if the state does not officially recognise your gender, and you do not have it on your documents, your gender should be protected when being stopped and searched or arrested, because gender reassignment – defined as a "personal, social and sometimes medical process" – is a protected characteristic under the Equality Act.

UK law is currently unclear about non-binary people. This does not mean that if you are non-binary you need not be assertive about your gender if you wish.

No police officer has the right to ask you whether you have a Gender Recognition Certificate.

The law is (unsurprisingly) still transphobic – Annex L of the PACE codes, which explicitly addresses gender reassignment, says that police officers should ask you your gender and respect it, unless your "predominant lifestyle" is different from what officers decide. This does not mean you cannot insist on having your gender recognised.

2. Key Messages - Being Trans and Protesting

If you're heading out on a protest, take a read of our key messages and download a copy of our latest bustcard.

We suggest that you take a note of our arrestee support number and of a criminal solicitor with protest experience. Write them down on something the police will struggle to take from you, such as an arm or a leg.

> **Arrestee Support: 07946 541 511**
> **Solicitor with protest experience**

Key Messages

- No Comment
- No Personal Details
- Under What Power?
- No Duty Solicitor
- No Caution?

1. No Comment

You are not obliged to speak to the police on demonstrations.

They want to gather information about you, your friends and other people on the demonstration. You can and should say "No Comment" to them. If arrested, you do not need to answer police questions, so don't. This is for your own protection and for the protection of others. The police will try to pressure and deceive you into incriminating yourself. Instead of trying to decide when it seems 'safe' to answer, just say "No comment" to all questions – during 'informal chats', in the police van, and especially in interview.

However, if you have been arrested and have been taken to the police station you may wish to give your name, address and date of birth at the custody desk to speed up your release.

You may also wish to speak to the cops if you are trans and being forced to interact with them (e.g. if you are being stopped and searched or arrested) and they are misgendering you. You have the right to insist that your gender be recognised.

UK law is currently unclear about non-binary people. However, government policy documents refer to nonbinary people, and therefore by extension you can insist that your gender be respected.

If possible, just don't engage with the police. No comment.

2. No Personal Details

You are not obliged to give your details under any stop and search power. This includes your name, your address, and your gender.

If you are being stopped and searched, 'non-intimate' searches (i.e. 'pat-downs' – being physically touched by an officer outside of your clothes) can be done by officers of any gender, but you have the right to ask to be searched by an officer of the same gender as you, and if it is 'reasonably practicable' this should be done. Therefore if you are being

misgendered you can insist on being treated as your gender.

If you are non-binary, because the police only have to provide someone of the same gender as you 'where reasonably practicable', it is very unlikely you will be physically searched by a non-binary officer. This doesn't mean you needn't request this if you wish.

3. Under What Power

If the police are demanding that you do certain things, ask "Am I legally obliged to do so?" then if they say yes, "Under What Power?" The police must have a legal basis for their actions. You can ask them "under what power" are they doing things.

4. No Duty Solicitor

The "duty solicitor" is the solicitor who is present at the police station.

They may come from any firm of solicitors, which means they almost certainly know nothing about protest.

Duty solicitors often give bad advice to protesters; we recommend you always use a good solicitor who knows about protest.

Irvine Thanvi Natas (ITN): 0203 909 8100
Hodge Jones Allen (HJA): 0808 274 8226
Bindmans: 0207 305 5638
Kellys (outside London): 0800 387 463

5. No Caution

Offering you a caution is a way the police may ask you to admit guilt for an offence without having to charge you.

It is an easy win for the police, as they don't have to provide any evidence or convince a court of your guilt.

At the very least, you should never accept a caution without taking advice from a good solicitor.

3. Being Stop & Searched

You do not have to give any personal details during a stop and search. Police stop and search people to gather intelligence and to intimidate.

This section will focus on specific issues that transgender folk might face if the police stop and search them. It will cover:

- 1. Documentation
- 2. Being Touched By a Police Officer During a Search
- 3. FAQs About Stop and Search

For a more general, and in-depth, guide please consult our Stop and Search guide.

1. Documentation

If they succeed in accessing your documentation by going through your bag or wallet and finding ID, bank cards or letters, cops might argue that you 'might have stolen' your own property and so they 'need your details' to verify that you haven't.

This is nonsense, but does sometimes happen to people, regardless of their gender. If you know you are going on a demonstration, think about what documentation you need to bring with you: if you don't need it, leave it at home: it could limit this from happening. If your documentation has different names on, or if the name or title on documentation is associated with a gender different from how you present, the police might argue that you have stolen your own stuff.

All of the documentation is yours. You can and should insist on this. However, it is possible that the police could arrest you on suspicion of theft. This is very rare, and the case wouldn't go anywhere in court, but it is possible.

This situation could make you feel that you have to out yourself as trans in order to explain the situation. That is your decision, and some people would choose to do this. However, it is not illegal to have more than one name, and you do not have to give them your personal details.

You may choose to give your name under threat of arrest for theft, however, in order to assert that that is your property, and that is your decision.

Take the names and numbers of the officers who have treated you in this way, and get in touch with GBC if you wish to make a complaint against them.

2. Being touched by a police officer during a search

If you are being stop and searched, 'non-intimate' searches can be done by officers of any gender, but you have the right to ask to be searched by an officer of the same gender as you.

If it is 'reasonably practicable', this should be done.Searches involve being touched by an officer on your legs, arms, back and chest outside of your clothes. They can make you remove outer clothing such as a coat or hat.

If you are being misgendered you can insist on being treated as your gender so as to be searched by an officer of the same gender.Because the police only have to provide someone of the same gender as you 'where practicable' it is unlikely you would be searched by a non-binary officer.

If the police want to do a more intimate search where they make you remove more than outer clothing, they have to take you to a private place, which could be a police van, and you must be searched by someone of the same gender. Therefore you can insist that they recognise your gender so that you are searched by an officer of the appropriate gender.

A search must be proportionate to the reason for the search. If police officers tell you they have to search you more intimately, ask them why that is necessary. If they are searching for items that could be used to cause criminal damage, or weapons, it is very unlikely that you would need to remove more clothing because a pat down search would lead to the discovery of such an item.

However, there may be rare circumstances where an intimate search would be considered reasonable by the police (e.g. they could argue they are looking for razor blades). The police can ask you to remove clothing to recover such an item if it is not voluntarily handed over.

A search cannot lawfully be done to try to determine what a police officer considers to be your "real" gender. This is definitely not a lawful basis for a search and would obviously be discriminatory.

3. FAQs About Stop and Searches

1. What if, for whatever reason, a police officer challenges my gender after having searched me?
Your gender is your gender. You can insist on being treated as your gender and do not have to out yourself as trans to anyone. The Equality Act 2010 defines gender reassignment as a protected characteristic.

2. Can I be stop and searched if I am read as a man coming out of the women's toilets?
No. It is not up to you to explain yourself. It is up to them to justify how they are treating you and the law under which they are acting. Always ask: "Under What Power?: "Am I being detained? If so, under what power?" Under PACE there are limited things you can search for, e.g. items that could be used to cause criminal damage. Being read as a man coming out of a women's toilet is not one of those things.

3. Am I putting myself in more danger by outing myself to a police officer?
Legally, this should not be the case because of the Equality Act 2010. If you choose to out yourself as trans, you should absolutely tell the officers that you expect to be treated with respect and in accordance with the Equality Act, under which gender reassignment is a protected characteristic. However, transphobia is rife, and therefore how you are treated at the time will depend on the individual cop.

If you have a negative experience during a Stop and Search, whether that be due to transphobia or any other reason, get in touch with GBC. We can put you in touch with a solicitor who can help you make a complaint against the officers if you wish.

The Y-Stop App can be used to record a Stop and Search. The app is available here.

4. Being Arrested

This section covers specific issues that transgender people may face if they are arrested. For general advice, please see our guide on being arrested here

This section will cover:

1. When is gender a particular issue?
2. Giving your name
3. Access to medication, hormones, birth control, sanitary towels
4. Additional questions about arrest

1. When is gender a particular issue?

There are specific times when you are arrested when gender is a particular issue:

• When your details – whether you choose to give them or not – are being recorded
• If you are grouped with other people of what the police perceive to be your gender
• If you are put in a cell with other people of what the police perceive to be your gender you should be put in a cell with someone of the same gender as you.

Therefore you can insist on being accurately gendered. Good times to do this are at the point of arrest being checked into the police station on arrival.

It is totally your decision as to whether you wish to do this. Some people would rather endure being misgendered during their time in custody. Do what makes you feel safest.

If you are going on an action and you think you could be arrested, let your friends or affinity group know how you want to be treated in the police station if you are arrested. If you have people providing back office legal support to your action, you can let them know too so they can check in with your solicitor to make sure you are being treated appropriately.

2. Giving your name

Two important things to remember if and when you give your name in the station are:

• You can change your name in English and Welsh law at any point for any reason as long as it is not to engage in fraud
• You don't have to have any documentation of the name that you give, it is still your name.

The police are likely to check your name against the electoral register, they might send a cop round to the address you've given and ask if you live there.

If you give a fake name with the intention to deceive, that is illegal. If it is your name, that is not a problem, even if you have more than one name. This means you do not have to undergo misgendering in the station just because your official documents do not reflect your actual name and gender.

3. Access to medication, hormones, birth control, sanitary towels

You may need to access hormones, other medication, birth control, sanitary towels or other hygiene products while in custody. Speak to your solicitor: they can advocate for you. Having hormones with you may cause them to question your gender. You can speak to your solicitor about this as well.

4. Additional questions about arrest

If the police are continuing to misgender you, is there a process to challenge that?
If you want to, you can tell your solicitor who can also insist on your being treated appropriately.

Given that gender dysphoria is technically a mental health condition, is there any way the police can use this against you while you are in custody?
No. Gender reassignment is a protected characteristic under the Equality Act 2010. The police have no right to treat you as mentally ill because you are trans. The police can decide that you need a mental health assessment for various reasons, and this must be done by a medical healthcare professional. It cannot be done by a police officer. You can ask to have an Appropriate Adult present if you wish.

What if I am under 18?
You have the right to have a parent, guardian or Appropriate Adult informed of your arrest and present for any interview. They may offer you a Social Worker but we recommend against this.