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SUPPORTING TRANSGENDER STAFF POLICY

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Contents

1	Policy Statement	3
2	Purpose	3
3	Background/Content	3
4	Scope	4
5	Aims and Objectives	4
6	Roles and Responsibilities	4
7	Recruitment and Selection	4
8	Disclosure and Baring Service (DBS)	5
9	Record Keeping	6
10	References	7
11	Birth Certificate	7
12	Work Permits	7
13	Nation Insurance	7
14	Pension	8
15	Professional Registration	8
16	Managing Staff Going Through the Transition	9
17	First meeting	9
18	Real Life Experience/Change in Social Gender	10
19	Uniform/Dress Code	10
20	Informing Colleagues	10
21	Use of Changing/Shower Facilities and Toilets	11
22	Public Facing Roles	12
23	Time off Work	12
24	Responsibilities	12
25	Equality	13
26	Training	13
27	Resources	14
28	Implementation	14
29	Policy Conformance/Non Compliance	14
30	Distribution	14
31	Review	14
32	Legislation	15
33	Further information	16
34	Reference	16
35	Acknowledgement	17
	Gender Terminology	18
Appendices		
Appendix 1	Legal Exceptions	21
Appendix 2	Additional Legislation Information	23

1. Policy Statement

It is the Trust's intention to protect the rights of all staff, volunteers, applicants and members of the public to be treated with fairness, dignity, respect and professionalism. The Trust will ensure that anyone who identifies as transgender (Trans) whether they may be considering undergoing, currently undergoing or who has undergone gender reassignment or not, will feel valued, respected and understood and as a result be treated fairly.

2. Purpose

The purpose of this policy is to set out the support that is available to both managers and staff, if a staff member identifies as Transgender, this includes gender identity and expression. The Trust recognises that not all people that identify as transgender wish to undergo medical procedures, but still have the legal protection under the Equality Act 2010 to work free from discrimination.

3. Background/Context

Employers should expect about 1% of the workforce to experience and/or express their gender in ways that do not conform to the typical binary man/woman model. Many of these people will not disclose their feelings and may choose not to express them in the workplace because they fear a transphobic reaction from their employers and co-workers. Nonetheless, 25 per 100,000 in the general population have already sought medical treatment and this number appears to be doubling every six years. (GIRES 2012)

A transgender or Trans employee is an employee whose gender identity or gender expression differs from the gender assumptions made about them when they were born. For some they may feel that they do not fit into the male and female binary and therefore will identify as non-binary.

For the purpose of this document the term Trans is used to support transgender and non binary staff.

Some Trans employees will have just started to undergo gender reassignment (transition) to change to the gender role in which they live to better reflect their gender identity. Others will have already completed their gender reassignment (transition) and will have a Trans history. Some Trans employees may still be deciding whether or not to change the gender role they express in the workplace and may express their gender differently on a part-time basis in non-work situations.

Many Trans employees face discrimination before, during and after the process of gender reassignment. Most Transgender employees are not "out" as Trans to their workplace colleagues or managers. Often it is only when an employee is actually

changing their workplace gender role as part of the process of gender reassignment (transition) that they will be out about being Trans. Many Trans employees do not feel they can afford to take the risk of being “out” as Trans in the workplace. Half of trans people (51 per cent) have hidden their identity at work for fear of discrimination (Stonewall report – LGBT in Britain Trans Report 2018).

Change often creates anxiety about the unknown and as with all change, gender transitions affect many people, the individual transitioning, their managers, colleagues, clients/patients and those with whom there may be incidental contact (such as working in the same location or practice area).

4. Scope

This policy applies to all Velindre University NHS Trust and Hosted Organisation staff who would consider themselves to be transgender or non-binary, including those staff considering undergoing, currently undergoing or having undergone the gender confirmation process (or any part of the reassignment process), their managers and colleagues. It applies to currently employed staff, potential employees, agency staff, locums, staff on honorary contracts and volunteers. It also applies in situations where employees are service users. It is expected that staff will afford all individuals equal fairness, respect, dignity and professionalism at all times under the terms of this policy.

5. Aims and Objectives

The guiding principle supporting this policy is to create a fair and equal culture in which staff are protected from discrimination, harassment and victimisation on the grounds of their transgender status.

This policy aims to:-

- Create an open, diverse and supportive work environment that meets the needs of all Trans people and supports their aspirations.
- Provide general advice and guidance to build understanding around transgender issues and gender reassignment;
- Assist managers in supporting staff who have changed their gender identity before joining the organisation where support is needed/requested.
- Assist managers in supporting staff who may be considering changing or are changing their gender identity whilst employed by the Trust.
- To support Transgender staff, their managers, colleagues and all other staff in maintaining a professional working environment that embraces diversity, and promotes fairness and equity for all.
- To ensure that any incidents of violence and or aggression towards transgender staff are reported and managed in accordance with the NHS Wales Obligatory Responses to Violence in Healthcare initiative.

6. Roles and Responsibilities

Under the Equality Act 2010, it is unlawful to discriminate against or harass transgender people. This applies strictly to those people having the protected characteristic of gender reassignment (Transsexualism) but including all Trans people is excellent practice in employment, vocational training, or in the provision of goods, facilities and services.

All references to duties to promote the equality of men and women include Trans men and Trans women.

7. Recruitment and Selection

The Trust welcomes applications for employment from Trans people, and all applicants can be assured of equal and fair treatment. It should not be expected that applicants and interviewees for employment would wish to disclose their gender history. It is neither a relevant criterion for selection for a post, nor a question that should be asked at interview or alluded to in the recruitment and interview process.

However, if one of the limited exceptions applies, then an individual would be expected to disclose their trans status and an interviewer would be able to ask an appropriate question. Advice should be sought from Workforce and Organisational Development if considering claiming exemption as very specific criteria apply (**Appendix 1**).

Any statement about the need for disclosure must be accompanied by the explicit reassurance that such information will be treated in absolute confidence and that disclosure will not preclude eligibility for the post.

There is no obligation for a transgender person to disclose their status as a condition of employment. If they choose to disclose, this is not in itself a reason for not offering employment and non-disclosure, or subsequent disclosure are not grounds for dismissal. All decisions must be based around the qualifications and skills offered by individuals.

Individuals involved in the recruitment and selection process who become aware of an applicant's transgender status must maintain full confidentiality in relation to this issue as indicated in the relevant legislation. (see page 23-25).

Employees at all levels who could learn about an individual's gender reassignment history in the course of their work need to be very clear about the handling of this information. This could apply to:-

- The information that can be entered into Workforce files where other staff might have access;
- Discussion about an applicant's job interview;

- The contents of Occupational Health Reports;
- Information that can be passed from one medical professional to another in the course of referral or when discussing a case;
- Information stored in medical records where that data could be accessed by others.

Any such information must be treated with the utmost confidentiality and included only as “sensitive data” (General Data Protection Regulations) in any records which must not be available to or accessible by anyone not specifically authorised or agreed with the specific employee to have access. (see page 23)

8. Disclosure and Barring Service (DBS)

For those staff requiring a DBS check the process requires applicants to state all previous names and aliases. The last page of the form then has to be completed by the “Registered Person” who checks and verifies the contents and the evidence supplied. This means there can be some anxiety about the implications for transsexual applicants and existing transsexual staff who have legally changed their name.

The DBS has a confidential checking process for transgender applicants who don’t want to reveal details of their previous identify to a potential or existing employer. These applicants are required to contact the DBS direct via email or telephone. Any Trans employee who does not wish to disclose a previous name on the initial disclosure form has a legal duty to follow this special DBS procedure. It is good practice to make this information available to all staff and applicants needing a DBS check.

Transgender applicants – sensitive@dbs.gsi.gov.uk

Telephone 0151 676 1452

Further information is available on the Disclosure and Barring Services website;

<https://www.gov.uk/crb-criminal-records-bureau-check/contact-disclosure-and-barring-service>

9. Record Keeping

Transgender people can apply to the Gender Recognition Panel to seek full legal recognition. If successful a full Gender Recognition Certificate (GRC) is issued to the applicant unless the person is married or in a civil partnership. A married person or one in a civil partnership may obtain an “Interim GRC” until such time as their marriage or civil partnership is converted. With the 2013 introduction of same sex marriage, it became possible for a spouse to legally change their gender without requiring a divorce in mainland UK; however, Northern Ireland remains an exception.

A transgender member of staff is under no obligation to provide a GRC to their employer and has the right to have respect shown for their new name and gender role from the start. Nor should anyone be asked for a GRC or if they hold one; under any circumstances. A birth certificate or passport is the relevant primary identification document for all people.

The manager and Workforce Manager should advise on where records are maintained that need to be changed. Managers and Workforce Managers should ensure that all documents, public references (such as telephone directories, web biographies etc.) and employment details display their acquired gender. All records that disclose previous gender history should be withdrawn and destroyed as soon as the person legally changes their name and any copies needing to be kept in the person's workforce file have to be treated as "sensitive data under the Data Protection Act and not disclosed to anyone not specifically authorised to see them.

When documents have been seen and copies taken at the point of starting employment (such as birth certificate) then every effort will be made to replace those with equivalent documents in the new name and gender. The Data Protection Act limits the purposes for which information may be kept. When the information is no longer useful, it must be destroyed. In some instances, it is 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 GRC, these must be replaced with new details.

Access to records showing the change of name and any other details associated with the individuals Trans status (such as records of absence for medical treatment) must be restricted to staff who need the information to do their work. Such people could include those directly involved in the administration of a process, for example, Occupational Health Physician, or the person who authorises payments into a pension scheme. They do not include colleagues, line managers or third parties.

Once a person has received a GRC, there must be no disclosure of this information. Breaches of confidentiality must be treated in the same serious manner as disclosure of personal details of any other member of staff. It must also be recognised that such disclosure after the receipt of the GRC is a strict liability of a criminal offence.¹

Trans staff may choose voluntarily to disclose information at a secondary level, e.g. answering a staff survey or asking for support from a line manager. Again, strict confidentiality must be observed as further disclosure must not be made without the express written permission of the individual. This means that such questionnaires must be assessed for impact beforehand to determine how such circumstances are going to be handled in confidence.

¹ A strict liability criminal offence means that someone can be held responsible for the offence without proof of carelessness or fault.

It is not an offence to disclose protected information if the person cannot be identified or if they give their consent. Such consent however must not be forced, and should be written confirmation of consent from the individual concerned.

10. References

If giving a reference for someone moving to a new job, a reference must be in the name which will be used in the new job and must not disclose a former name.

It may sometimes be necessary for a transgender person to disclose a previous identity in order for a reference from past employers to be obtained. In these cases, strict confidentiality and respect for their dignity must be applied and protected information kept secure.

It is good practice to give references in the name of the person as they were named on the request for reference

11. Birth Certificates

Someone who has changed their gender and has a GRC will be able to obtain a new birth certificate which will not disclose the fact they have changed gender (described as Sex on the Birth certificate).

12. Work Permits

Staff who are working in the Trust on a work permit or student visa are asked to comply with any work permit/visa regulations which may relate specifically to name change or gender reassignment in order that the work permit/visa continues to be valid.

13. National Insurance

Staff who change their name will need to inform the local Department of Work and Pensions and will pay National Insurance (NI) contributions on the basis of their affirmed gender if they choose to provide their GRC.

People will be referred to in their new gender pronouns by HM Revenue and Customs, but they will still have their original birth gender for National Insurance purposes unless and until they choose to provide a GRC.

They are under no obligation to provide a GRC or disclose their transgender status.

14. Pension

From 2019, the State Pension age will increase for both men and women to reach 66 by October 2020. The Government is planning further increases, which will raise the State Pension age from 66 to 67 between 2026 and 2028.

The State Pension age is going to be kept under review, which means that it could change again in the future, depending on different factors, such as changes in life expectancy.

Pension entitlements relate to a person's legal gender and these change only when a person obtains a GRC which allows them to get a new birth certificate in their acquired gender.

A transgender person who receives a GRC and thereby a new birth certificate will be treated according to their acquired gender for pension purposes. Transgender people who do not obtain a full GRC retain their full pension rights in accordance with the sex that is recorded on their original birth certificate.

In terms of pension provision, it is good practice for employees to be treated as having their birth gender up to the point of transition (i.e. prior to and up to the point when they start to live fully in the acquired gender). Employees must be treated as having their acquired gender from the point of transition. (i.e. when they start to live fully in the acquired gender). This would apply for example in calculating funds transfers between pension plans.

If a person retires earlier than others of their gender because of their legal gender, employers must keep this confidential. (For example, a Trans man who does not have a GRC and retires at the age for his birth gender).

15. Professional Registrations

Those staff who are professionally registered are advised to contact their professional bodies to find out whether there are any specific requirements in terms of name changes etc. If the employer has to keep evidence of professional status or qualifications, the manager must discuss with the member of staff how to retain such evidence on file so as not to compromise or breach disclosure of protected information.

16. Managing Staff Going Through the Transition

The successful support and management of an employee's gender reassignment depends crucially on taking account of the individual's views on how to proceed. It should be noted that the first contact may be just to "sound out options". Some Trans

people evolve over many years and may only “switch” gender after some years of varying gender expression.

When a member of staff considers embarking on gender reassignment, the initial point of contact may vary according to the nature of the workplace and preference of the individual, but could be an immediate line manager, a senior manager, Workforce and Organisational Development Manager, the Trust Equality and Diversity Manager, a Union Representative, a diversity network or a colleague or Occupational Health Department/Staff Psychological Wellbeing Service. All must maintain confidentiality except as agreed otherwise by the individual. It is vital to assure that the Trust will be supportive and that it does not tolerate discrimination against or harassment of Transgender employees.

Initially, managers (and any other member of staff acting as a point of contact) should be made aware of this Policy, in order to support the individual fully. Confirmation should be given to the employee about who will be the main point of contact to manage the transition from the Trust’s perspective and then to arrange a meeting with the nominated person to have a more detailed discussion and to agree the process for handling the transition. A member of the Trust’s Workforce Team will be appointed to act as an advisor on this policy and to provide guidance and advice to transsexual staff and their manager.

17. First Meeting

The nominated contact and member of staff should agree an action plan together for managing the transition at work. This, along with any other notes of the meeting, must be kept strictly confidential in the individual’s personal file. The action plan should include:-

- Whether the employee is to stay in their current position or if they wish to be redeployed – this will be the choice of the individual. It is inappropriate to redeploy someone who wishes to transition just because you think it is in their best interests. ²
- The expected timescales of the medical and surgical procedures, if known. This may vary considerably.
- Time off required for medical treatment (if known), this may vary considerably in accordance with the needs of individuals concerned.
- The expected point or phase of change of name, personal details and social gender
- Whether the employee wishes to inform their line manager, colleagues and clients themselves, or would prefer this to be done for them and whether training or briefing of colleagues will be necessary or desirable.
- The amendments that will need to be made to records and systems

² A request for redeployment should be considered at any time in order to fully support the member of staff

- Whether a transgender employee is adequately covered by existing policy on issues such as confidentiality, harassment and insurance and, if not, how these will be amended
- A procedure for adhering to any dress code. Having a mentor can help in relation to advice on appearance, style etc.
- Agreeing the point at which an individual will commence using single sex facilities such as toilets, changing rooms and showers in their new gender

After a person has successfully transitioned into their new gender role, it would not be appropriate to keep these records within the personal file and they must be destroyed. It may also be useful to involve Occupational Health at this point if they are not already involved.

18. Real Life Experience/Change in Social Gender

Staff undergoing treatment will receive specialist medical advice and diagnosis. They will usually be expected to undertake a “real life experience” in which they begin to live and work in the new gender role. At this point, they may have records changed to reflect this such as driving licence or passport. Treatment packages are tailored to the individual and may vary greatly in terms of chronology, time span and choices made, but may include transition to the gender role (nearly everyone), hormones (most) and surgery (many).

This change in social gender, whilst usually taking place before hormone therapy, but can be during or after hormone therapy and will often occur years before the final surgical procedure, which for some members of staff will never take place. These issues must be discussed fully with the member of staff.

19. Uniform/Dress Code

Any dress code forms part of the contract of employment. The Trust currently adheres to the All Wales Uniform and Dress Code Policy. Some flexibility must be allowed to accommodate the change of gender role, but the Transgender person is otherwise required to adhere to the All Wales Uniform and Dress Code Policy, dressing appropriately for the acquired gender from the date of transition.

Where clothing or uniform is provided by the Trust, new clothing will be provided consistent with the change in gender on the same basis as replacement clothing/uniform is provided to accommodate a change in size.

20. Informing Colleagues

It is good practice for employers to take responsibility for informing whoever needs to know, unless the individual going through the process would prefer to do this. The Trust must not inform colleagues, clients or the public that an employee is intending

to undergo or is undergoing or has undergone gender reassignment without the employee's explicit written agreement.

With regard to the change of name, all staff must refer to the transgender person by their new name and use pronouns appropriate to their acquired gender.

Colleagues should be given general information about transgender issues (available Via Equality and Diversity training sessions) and specific information to help people to understand the needs of the person involved.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender reassignment. This is a private matter since gender reassignment will have no bearing on that person's ability to do their job. Such disclosure may result in a criminal offence if the person concerned has a GRC and it is done without the explicit consent of the individual concerned. It is always good practice to assume that all those who have transitioned to their acquired gender have a GRC.

21. Use of Changing/Shower Facilities and Toilets

The use of changing/showering facilities and toilets will be part of the discussion process with the member of staff undergoing gender reassignment, with a view to agreeing the point at which the use of facilities should change from one sex to the other. An appropriate stage for using the facilities of the new gender is likely to be the change of social gender.

Should there be any objections to this, as a temporary measure, it may be appropriate to reserve one set of facilities for those who object to sharing facilities with the individual concerned. It is not good practice to allocate specific facilities for the individual undergoing gender reassignment. In particular, they must not be asked, expected or required to use accessible facilities allocated for people with disabilities (unless they have a disability which requires this) and it is not acceptable to expect any members of staff to accept this.

Where changing or shower facilities are open plan, then it is good practice to review this and at least make some provision (e.g. curtained spaces) where staff need not be in a state of undress in the presence of others.

If it is genuinely impossible to adapt such changing/shower facilities to accommodate this, then there is one very limited example of an instance where the law permits an employer to make separate arrangements. It is highly unlikely that the employee concerned would object to this pre-operatively. Such special arrangements must be time limited.

It would not be acceptable to expect an individual undergoing gender reassignment to use facilities designated for use by those of their birth gender.

Following gender reassignment, whether or not this has involved surgical procedures, the individual should be fully supported in using all facilities appropriate to his or her acquired gender.

The Trust will ensure that any arrangements for toilet/shower/changing facilities are satisfactory to the transgender member of staff and their colleagues and patients as appropriate. Any unsatisfactory practical arrangements must be reported to the designated Workforce Manager as soon as possible.

22. Public Facing Roles

A member of staff's gender transition may be unavoidably visible to the public especially in the early stages of gender transition. Although many people cease being visibly different as transition progresses, there are others for whom it will continue to be a reality.

Some staff may elect to move to another role during transition, however, they cannot be required to do so. Similarly, the way someone looks and the negative reactions this might be expected to elicit from certain members of the public must not be a barrier to recruitment for a public facing role. In these circumstances, it is important that managers support the member of staff in a positive manner and listen to how they feel about things and how they feel they are coping. Managers should be willing to explore equitable solutions. Colleagues may also benefit from advice on how to contribute. The Trust will provide training for staff and has an ongoing program of equality awareness events that will support staff's development and understanding.

23. Time Off Work

Transgender staff who choose to undergo medical and surgical procedures related to gender reassignment may require time off from work. Such absence is covered by Section 16 of the Equality Act 2010 which states that an employer must not treat a person absent because of gender reassignment less favourably than they would treat:-

- absence due to sickness or injury
- absence for some other reason if it is not reasonable to do so.

The public sector duty to advance equality requires organisations to have regard to the need to remove or minimise disadvantage and meet the different needs of those with a protected characteristic, in this case, gender reassignment. This allows and encourages employers to take positive action that removes the significant disadvantage that would inevitably be incurred by staff undergoing gender reassignment.³

³ Agender The Workplace and Gender Reassignment – A Guide for Staff and Managers

The legislation does not specify a minimum or maximum time that employers should allow for treatment. If, however, the Trans employee is absent for a long period, retirement on medical grounds may be considered in the same way as for any other person who is medically unfit for work. The Trust's policy on managing Attendance at Work and time off for Medical and Dentist appointments must be referred to for guidance. Individual rights related to disability under the Equality Act 2010 must be considered where the individual has received a medical diagnosis (such as Gender Dysphoria or Gender Identity Disorder) and the condition is likely to last for more than twelve months, has lasted more than twelve months or will remain with the individual for the rest of their life. Managers should try to be as flexible as possible to meet reasonable requests for changes in shifts or working hours within the needs of the service and should refer to the Flexible Working Policy.

Line managers may need to be aware of the possibility of side effects from medication, which may adversely affect work performance. The application of disciplinary action/dismissal from employment in accordance with capability procedures is not appropriate in these circumstances.

The individual may also suffer from longer term depression if their reassignment does not go smoothly for reasons that may or may not relate to work. In this case, it should be dealt with under arrangements for reasonable adjustments for disability, rather than as gender reassignment absence. The employee and line manager will meet to discuss the possibility of the employee who is undergoing gender reassignment working reduced hours, having reduced duties or the possibility of relocation. It is important that a Trans person is never removed from a public facing role because they are Trans – unless they have specifically requested to be moved.

Managers should not seek to impose a change of duties on the individual, but must seek assistance, including advice from Occupational Health before decisions are made in respect of any adjustments, redeployment or the need for termination of employment.

Gender reassignment is not a "sickness" and should be managed by the manager and employee to a successful outcome.

24. Responsibilities

Line managers are responsible for ensuring that this Policy is applied, as necessary, when recruiting staff and for staff they are accountable for.

All employees are responsible for ensuring that the requirements of this policy are adhered to at all times and are expected to treat the transsexual or Transgender person with dignity and respect. This requires an acceptance of the needs and differences of others without dwelling on those differences.

The transgender person will also be expected to be sensitive to other individual concerns/sensitivities and to report any concerns to their Line Manager.

A transgender person has the same right as everyone else to work in an environment free from harassment and/or behaviour that creates feelings of unease or distress and managers are expected to monitor the working environment to ensure that this right is upheld.

Any concerns of staff which are not able to be resolved at a local level i.e. through discussions with the Line Manager and the individuals concerned must be brought to the attention of the relevant Workforce Manager, who will attempt to negotiate an acceptable outcome with the parties.

The Trust Employee Assistance Programme can be accessed to provide a confidential support service. Signposting to additional services and providing short term counselling (up to 6 sessions).

25. Equality

The Trust is committed to ensuring that, as far as is reasonably practicable, the way it provides services to the public and the way it treats its employees reflects their individual needs and does not discriminate against individuals or groups.

The Trust has undertaken an Equality Impact Assessment and received feedback on this policy and the way it operates.

The assessment identified the need to ensure that all managers and staff were aware of the policy and the support available both internally and externally. As well as the need to challenge negative behaviour to create a culture of trust, openness and awareness and that where appropriate the Trust will make plans for the necessary action required to minimise any negative impact to ensure that it meets its responsibilities under the equalities and human rights legislation

26. Training

Whilst there are no formal training programmes in place to ensure implementation of this policy, all Senior leads must ensure that managers and all staff, clinical and non-clinical, are made aware of the policy provisions and that they are adhered to at all times.

27. Resources

The implementation and management arrangements associated with this policy do not present any significant resource implications to the Trust.

28. Implementation

The policy will be published on the Trust Board's intranet website Approved Policies page.

29. Policy Compliance / Non Compliance

If any Trust employee fails to comply with this policy, the matter may be dealt with in accordance with the Trusts Disciplinary Policy. The action taken will depend on the individual circumstances and will be in accordance with the appropriate disciplinary procedures. Under some circumstances failure to follow this policy could be considered to be gross misconduct.

30. Distribution

The policy will be available via the Trust Intranet Site and from the Workforce and OD Teams. Where staff do not have access to the intranet their line manager must ensure that they have access to a copy of this policy.

31. Review

The Trust Equality Manager will review the operation of the policy as necessary and at least every 3 years.

32. Legislation

Under the Equality Act 2010, it is unlawful to discriminate against or harass transgender people strictly those having the protected characteristic of gender reassignment (Transsexualism) but including all Trans people is excellent practice in employment, vocational training, or in the provision of goods, facilities and services.

All references to duties to promote the equality of men and women include trans men and trans women.

Legislative definitions of unlawful behaviour relating to gender reassignment

- **Direct discrimination**
treating a person less favourably than another in comparable circumstances because of their gender identity.
- **Associative discrimination**
is direct discrimination against someone because they are associated with another person with the protected characteristic of gender reassignment.
- **Discrimination by perception**
is direct discrimination against someone because others think they have the

protected characteristic of gender reassignment even if they do not.

- **Indirect discrimination**
putting in place a policy or practice that has a differential (positive or negative) impact on someone who has the protected characteristic of gender reassignment when this cannot be objectively justified.
- **Harassment or bullying**
unwanted conduct which has the purpose or effect of violating someone's dignity, or which is hostile, degrading, humiliating or offensive to someone who has the protected characteristic of gender reassignment.
- **Victimisation**
treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting someone who is doing so.

The Gender Recognition Act 2004 gives Trans people the right to gain legal recognition of their chosen gender. There are specific responsibilities attached to the conduct of staff and organisations in the case of transgender people who have gone on to apply for and received legal recognition of their acquired gender. Once a Trans person has gained a Gender Recognition Certificate (GRC), any disclosure made that a person with a GRC was born a different gender to that in which they now live, is a criminal offence. The Act permits disclosure where the individual has given their explicit consent or under very explicit conditions prescribed by the Act. (see page 22).

Gender reassignment is a personal process (rather than a medical process) which involves a person expressing their gender in any way that differs from the physical sex they were assigned at birth. This personal process may include undergoing medical procedures or may include choosing to dress in a different way as part of the personal process of change.

It is best practice to assume any Trans person has gender recognition and to treat them accordingly.

33. Further Information

Further information, advice, guidance and support is available from the following:

Gender Identity Research and Education Society (GIRES) <http://www.gires.org.uk/>

Equality and Human Rights Commission – www.equalityhumanrights.com

A-GENDER – <http://www.agender.org.uk> - the employee support network for transsexual, Transgender and intersex staff in all parts of the civil service and associated government agencies across the UK

Unison National Trans Caucus – www.unison.co.uk/out

A confidential national transgender caucus that any trans member can join by emailing UNISON out@unison.co.uk . UNISON also provides a variety of trans equality guidance resources for trans employees and trade union reps.

UNISON guide on the rights of Trans workers, “Bargaining for Transgender Workers’ Rights” <http://www.unison.org.uk>

The Amicus Guide “Combating Homophobia and Achieving Equality for LGBT Workers – A Negotiator’s Guide” www.amicustheunion.org.uk

Trans – A Practical Guide for the NHS (Department of Health publication)

The Gender Trust is a registered charity which specifically helps adults who are transsexual, gender dysphoric or transgender. www.gendertrust.org.uk

The UK Intersex association is an education, advocacy, campaigning and support organisation working on behalf of intersex people. www.ulia.co.uk

Unique Transgender a social and mutual support network, serving North Wales and Cheshire. www.unique.org.uk

Stonewall Cymru – www.stonewallcymru.org.uk/workplace (for advice on sexual orientation issues not gender identity)

34. Reference

This policy was written with reference to:

GIRES 2011 Guidelines for employers - Legal protection and good practice for gender variant, transsexual and transgender people in the workplace - Author Terry Reed with acknowledgements to Christl Hughes and Heather Salmon.

Workplace and Gender Reassignment - A Guide for Staff and Managers . A: Gender

35. Acknowledgements

Hywel Dda Local Health Board – Supporting Transgender Staff Policy

GENDER TERMINOLOGY

Term	Definition
Sex	The biological classification of people as male or female. At birth, infants are assigned a sex based on a combination of bodily characteristics, including chromosomes, hormones, internal reproductive organs and genitals.
Intersex	Intersex describes a person whose biological sex is ambiguous. There are many genetic, hormonal or anatomical variations which make a person's sex ambiguous. Parents and medical professionals usually assign intersex infants a sex and perform surgical operations to confirm the infant's body to that assignment. This practice has become increasingly controversial and is being used less often.
Gender identity	Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, may or may not correspond with the sex assigned at birth, including the personal sense of the body(which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
Gender Dysphoria	Gender Dysphoria is a recognised medical condition in which the distress caused by a mismatch between biological sex (birth assigned sex) and the gender a person feel them self to be, causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.
Non-binary	Non-binary describes any gender identity which does not fit the male and female binary. Those with non-binary genders can feel that they: <ul style="list-style-type: none">• Have an androgynous (both masculine and feminine) gender identity.• Have an identity between male and female, such as intergender.• Have a neutral or unrecognized gender identity, such as agender.

- Have a gender identity which varies over time, known as genderfluid.

Non-binary people may also identify as transgender. The label genderqueer has a lot of overlap with non-binary. Non-binary is often seen as the preferred term, as "queer" may be used as a transphobic insult.

Transsexual

A transsexual person is someone with a strong and persistent feeling of gender dysphoria. Many transsexuals seek to alter their bodies to more closely match their gender identity by hormones and surgery. Those that have completed the process may not regard themselves as transsexual people but as men and women, having resolved the conflict between their gender identity and gender expression. It is also used by the Equality Act 2010 to define *transsexual people* as those people who fall within the definition of having the protected characteristic of gender reassignment. The legislation states "a reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment".

Transgender (often abbreviated to Trans and Trans*)

This is an umbrella term used to describe a whole range of people whose gender identity and/or gender expression differ in some way from the gender assumptions made about them at birth and the consequent biological sex assigned to them. This applies not only to those who identify as transgender or intersex but to anyone who feels that the gender assigned to them at birth incompletely or does not at all describe their own gender identity.

Trans*

Trans* is an umbrella term used to describe a whole range of people whose gender identity and/or gender expression differ in some way from the gender assumptions made about them when they were born. The terms transgender people and trans people can each include, but are not limited to : Cross-dressing and transvestites people, trans women, trans men, transsexual men and Transsexual women, people with a trans history, people identifying as androgyne, polygender, genderqueer, gender non-conforming, dual gendered and non-gender identifying people, gender questioning people, gender variant and gender diverse, transgender people and intersex people and anyone who

feels that the gender assigned to them at birth incompletely describes or does not at all describe their own personal gender or non-gender identity.

Transition

A trans woman is someone who was registered as a male child and later undertakes the “transition” to presenting as a woman because she wants to be regarded and treated as the woman she feels inside. Similarly a trans man is someone who was born with female anatomy and undertakes the transition to present to the world as a man. Altering one’s birth sex is not a one-step procedure: it is a complex process that occurs over a long period of time. Transition includes some or all of the following cultural, legal and medical adjustments, telling one’s family, friends and/or co-workers, changing one’s name and/or sex on legal documents,; hormone therapy and possibly (though not always) some form of surgical gender affirmation.

Gender reassignment

Under the Equality Act 2010, a person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. This is a deeply personal process that may involve medical interventions but does not have to.

Transphobia

A fear and dislike of transgender people which can lead to hatred resulting in verbal or physical attacks or abuse

Gender Expression

External manifestation of one’s gender identity, usually expressed through “masculine”, “feminine”, or gender variant behaviour, mannerisms, clothing, haircut, voice or body characteristics. Typically transgender people seek to make their gender expression match their gender identity, rather than their birth-assigned sex.

Transvestite

A person who dresses and acts intermittently in a style or manner traditionally associated with the opposite sex. The word “tranny” is considered derogatory, especially when used by those who are not Trans*.

Cross- dressing

To occasionally wear clothes traditionally associated with people of the other sex. Cross-dressers are usually comfortable with the sex they were assigned to at birth and do not wish to change it. “Cross-dresser” should not be used to describe someone who has transitioned to live full-time as the other sex or who intends to do so in the future. Cross-dressing is a form of gender expression and is not indicative of sexual orientation.

Sexual orientation

Describes an individual’s enduring physical, romantic, emotional and/or spiritual attraction to another person. Gender identity and sexual orientation are not the same. Transgender people may be heterosexual, asexual, lesbian, gay or bisexual. For example – a man who becomes a woman and is attracted to other women would be identified as a lesbian.

APPENDIX 1

An employer could discriminate against a transgender employee in three limited circumstances:-

- If the employer can show there is a genuine occupational qualification (GOQ) which means that the job has to be done by someone of a particular sex, and that is proportionate to prevent the trans person from doing the job as a result. This is known as a “single sex GOQ”.
- If the job involves conducting intimate searches pursuant to statutory powers (such as the Police and Criminal Evidence Act) prior to Gender Reassignment surgery (GRS).
- If the job involves working in a private home where there would be close physical or social contact, or knowledge of the intimate details of a person’s life and the employer can show that people would object. In such cases there needs to be a proportionate response, a balance between the rights of the service user and those of the staff member.

NB Equality Act 2010 - Schedule 9 “Occupational Requirements” does provide for exceptions where the requirement not to be a transsexual person is “a proportionate means of achieving a legitimate aim”. The onus is on the employer to prove such an exception applies. In general, a requirement that restricts an occupation to persons of a particular sex should also be open to transsexual persons of that acquired gender. The Codes of Practice published by the Equality and Human Rights Commission are clear that such exceptions will be rare and on a case by case basis.

In addition, there are some limited **temporary exceptions** which apply during the process of gender reassignment only:-

- Where individuals have to share accommodation and it is not reasonable on privacy or decency grounds to do so while in the process of undergoing gender reassignment. In that case, employers have to show that it would not be reasonable to provide alternative accommodation for the individual
- There is also a limited exception if a post requires the holder to provide vulnerable individuals with personal services and the employer reasonably believes those services cannot be effectively provided by someone undergoing gender reassignment. This exception will apply only in very rare circumstances, and may disappear after GRS.

None of the above exceptions/temporary exceptions apply to someone with a full gender recognition certificate. (GRC). If someone has a full GRC, under the Gender Recognition Act 2004, it is not lawful to discriminate other than on grounds that would apply to anyone else of their acquired gender. So a male to female trans person could only be lawfully discriminated against in a situation where it would be lawful to discriminate against any other woman.

There are however a few exceptions to this as defined in the Gender Recognition Act 2004 and modified by the Equality Act 2010.

“A person does not contravene this Act, so far as relating to sex discrimination or gender reassignment discrimination, only because of anything done in relation to...(a) the admission of persons to communal accommodation; (b) the provision of a benefit, facility or service linked to the accommodation.” EHRC

“A group counselling session is provided for female victims of sexual assault. The organisers do not allow transsexual people to attend as they judge that the clients who attend the group session are unlikely to do so if a male-to-female transsexual person was also there. This would be lawful.” EHRC

A counsellor working with victims of rape might have to be a women and not a transsexual person, even if she has a gender recognition certificate, in order to avoid causing them further distress.” EHRC

Service providers should be aware that where a transsexual person is visually and for all practical purposes indistinguishable from a non-transsexual person of that gender, they should normally be treated according to their acquired gender, unless there are very strong reasons to the contrary.” EHRC

APPENDIX 2 - ADDITIONAL LEGISLATION INFORMATION

EQUALITY ACT 2010

The Equality Act protects an individual under the protected characteristic of gender reassignment from the point at which the individual:

- makes their intention to seek gender reassignment known to someone;
- proposes to undergo gender reassignment, even if they take no further steps or decide to stop later;
- starts or continues to dress, behave or live (full time or part time) in the gender they identify with;
- undergo treatment related to gender reassignment; or
- has received gender recognition under the Gender recognition Act 2004.

THE DATA PROTECTION ACT 1998 (DPA)

Under the Data Protection Act 1998, transgender status and gender reassignment constitute “sensitive data” for the purposes of the legislation. It can only be processed for certain specified reasons set out in the Act. The DPA applies whether they have obtained legal recognition or not. It is best practice to assume any transsexual person has gender recognition and treat them accordingly.

THE HUMAN RIGHTS ACT 1998

This Act applies equally to the treatment of all Trans* people. The following articles of the Human Rights Act are of particular relevance:

Article 2 The Right to Life

Everyone’s right to life shall be protected by law. Not only does the state have to refrain from unlawfully taking the life of any of its citizens, it also has to put systems in place to protect life (for example, by ensuring effective policing) and take action to protect life where a particular person is in real and immediate danger (for example where a person at risk of suicide is receiving treatment in a hospital, the state must put in place safeguards to prevent that person from taking their own life). This right also has an investigative obligation attached to it. For example, the state must hold an investigation (usually in the form of an inquest) into deaths that occur when someone is detained by the state (for example in hospital or in prison).

Article 5 The Right to Liberty and Security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

Article 8 The Right to Respect for Private and Family Life

Everyone has the right to respect for their private and family life, their home and their correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10 The Right to Freedom of Expression

Everyone has the right to freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities.

Article 12 The Right to Marry and Found a Family

Men and women of marriageable age have the right to marry and found a family, according to the national laws governing the exercise of this right.

Article 14 Prohibition of Discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The GENDER RECOGNITION ACT 2004

The Gender Recognition Act 2004 provides trans* people with legal recognition in their 'acquired gender. Legal recognition follows from the issue of a Gender Recognition Certificate (GRC) in cases where the gender recognition panel (a judicial body of lawyers and doctors) is satisfied that the applicant

- has or has had gender dysphoria
- has lived in the acquired gender for at least two years prior to the application and
- intends to continue 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 provided for an application to be successful. Following successful application, a trans* person will acquire the rights and responsibilities of their acquired gender from the date of recognition. It should be noted that surgery, or any other gender reassignment treatment, such as hormone therapy, is not a requirement for the issue of a GRC.

Legal recognition has the effect that, for example, a female to male transsexual person is recognised as a man for all purposes and a male to female transsexual person is recognised as a woman – in law.

Upon the issue of GRC, the person assumes all legal rights of their new gender, including the right to marry someone of the opposite gender to their acquired gender, be eligible for the state retirement pension and other benefits at the age appropriate to their acquired gender. If their birth gender has been registered in the UK, they will receive a new (short form) birth certificate in their acquired name and gender, and can apply for the appropriate full birth certificate according to their date of birth.

Individuals who are married or have a civil partnership cannot currently receive a full GRC because marriage is not permitted between two members of the same sex. (This may change pending changes to legislation under discussion). Currently, they may apply

to the Gender Recognition Panel for an interim GRC. This enables them to obtain a full GRC after their marriage or civil partnership is annulled and provides a new ground for annulment to ease the process. The interim GRC is valid for 6 months, and can be exchanged for a full GRC if the marriage or civil partnership is annulled within the six months validity, otherwise a further GRC application has to be made, including any fee payable.

Section 22 of the Gender Recognition Act reinforces the right to privacy for Trans people in that it is **“an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.”**

“Protected Information means information which relates to a person who has made an application under the Gender Recognition Act. This covers both the fact of the application itself and, if the application was successful, the fact that the individual was previously of the opposite gender to the one in which they are now legally recognised.

A person acquires information in an “official capacity” if they are acting:-

- As an employer, or prospective employer, of the person to whom the information related or as a person employed by such an employer or prospective employer or
- In the course of, or otherwise in connection with, the conduct of business or the supply of professional services

It is not an offence to disclose information obtained in these circumstances if any of the following apply:-

- the information does not enable the person to be identified
- that person has agreed to the disclosure of the information (preferably a written agreement)
- the person making the disclosure genuinely does not know or believe that a full gender recognition certificate has been issued
- the disclosure is in accordance with an order of a court or tribunal
- the disclosure is for the purposes of instituting proceedings before a court or tribunal
- the disclosure is for the purposes of preventing or investigating crime
- the disclosure is made to the Registrar General for England and Wales, the Registrar General for Scotland or the Registrar General for Northern Ireland
- the disclosure is made for the purposes of the social security system or a pension scheme
- the disclosure is in accordance with provisions made through regulations which the Secretary of State is permitted to make under the Gender Recognition Act.