

# Policy on Supporting Transgender Staff

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## **1.0 Introduction**

United Lincolnshire Hospitals NHS Trust is committed to ensuring that transgender employees receive equal treatment and protection from discrimination at work. This policy, sits alongside the Gender Equality Scheme, and the Race and Disability Equality Schemes (to be replaced by the Single Equality Scheme in September 2008), and other relevant policies, to set out United Lincolnshire Hospitals Trust's commitment to equality for all staff.

Many transgender employees face discrimination before, during and after the process of gender reassignment. Over half those responding to a survey by Press for Change, the transgender lobby group, had changed employers, either because they were forced to by their employer or because they felt compelled to by intolerable working conditions. Many reported they were now doing lower paid work. 38% had experienced harassment during transition and 25% for a period after transition. Nearly a quarter reported verbal abuse and 6% reported physical abuse. 49% of respondents felt frequently discriminated against in recruitment.<sup>1</sup>

Becoming a model employer is a key goal for United Lincolnshire Hospitals Trust. Therefore it is vital that the Trust is able to recruit the best staff and skills from across the whole of society. This includes ensuring that transgender people are welcome and respected, and that policies in recruitment, retention and day-to-day employment do not unintentionally operate in ways that discriminate against transgender people.

## **2.0 Scope of the Policy**

This policy applies to all staff who would consider themselves to be transgender, including those staff considering undergoing, currently undergoing or having undergone the gender reassignment process.

## **3.0 Principles**

The guiding principles supporting this policy are:-

- Creating a fair and equal culture in which staff are protected from discrimination on the grounds of their transgender status

## **4.0 Definitions**

### **Transsexualism**

In the UK, clinical involvement for people expressing gender identities at variance from their physical gender has been traditionally led by psychiatrists,

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<sup>1</sup> (*Employment Discrimination and Transsexual People*, Whittle, 2000)

with approaches that were originally grounded in theories about sexual deviancy and mental disorder.

Nowadays even psychiatrists stress that the inclusion of transsexual terminology in mental health categories reflects the historical demand for a formal diagnosis on which to base treatment, despite that acceptance that it is not an illness and can not be 'cured'. Recent scientific research has advanced the theory that gender confusion may be caused by a pre-natal lack of sufficient male hormone production in the mother's body. There is still much to be discovered along these lines. It is widely appreciated that there is a need for peer support and possibly talking therapies to support people through taking an immense step in their lives, often in the face of disapproval among those they know. It should again be stressed that being trans is not a mental illness. This policy will use the term 'trans' to refer to transgender people, rather than transsexual, which has negative connotations.

## **Transgender**

Transgender (or 'trans') is an umbrella term used to include many people whose lifestyles appear to conflict with the gender norms of society<sup>2</sup>. A Transgender person is someone who has a deep conviction that their gender - whether they are a man or a woman - does not conform to the gender they were assigned at birth. This is known as Gender Dysphoria. Many transgender people wish to change their name and personal details and live as a member of the gender with which they identify. This may involve hormone therapy and surgery. This process is referred to as 'gender reassignment' or 'transitioning'

## **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. This transition may well have been made in the face of family and social disapproval.

## **Gender Reassignment**

Diagnosis of Gender Dysphoria may take a matter of months or a period of years. Preliminary diagnosis is usually followed by psychological counselling, which may then be followed by hormone therapy. Typically after about six months the individual's physical appearance begins to change. It is at this point that the effects of hormone therapy are often irreversible. Transgender people will often change their social gender around this stage, although not necessarily their gender role at work. At some point the individual will want to start to live full time in their 'new' gender and their name and other records (such as their driving licence and passport) may be formally changed. If there

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<sup>2</sup> Age Concern

<http://www.ageconcern.org.uk/AgeConcern/1057B44338A147ED86A2BC90F8796A17.asp>

are no delays (for example funding problems or waiting lists), the individual usually proceeds to one or more reassignment surgeries after one to two years of hormone therapy. The individual is expected to live and work in their new gender role for a period of at least one year prior to any irreversible surgical intervention. This period is often referred to as the 'real life experience' or 'real life test'<sup>3</sup>. It should be noted that some transgender individuals never undergo gender reassignment surgery.

For further information on key definitions see Appendix 1 (Guide to terms)

## **5.0 The Legal Framework**

In recent years the law has been extended in various ways to clarify the rights of people who are planning to undergo, who are undergoing or have undergone the gender reassignment process.

In brief, it is unlawful to discriminate against or harass trans people in employment or vocational training or in the provision of goods, facilities and services. Specific responsibilities attach 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. A criminal offence can be committed by staff who discloses the gender history of a legally recognised transgender person without explicit consent. The Gender Equality Duty also makes clear that all references to duties to promote the equality of men and women include trans men and trans women.

The Acts of Parliament and Regulations which organisations must comply with are written in terms of a series of definitions that apply to people experiencing a clinical condition referred to as Gender Dysphoria and are involved with the process of Gender Reassignment. Before 2005, all people remained legally the sex they were recorded at birth, despite living in the opposite gender, and were unable to get their birth certificate corrected. Although it was possible to have some official documents changed, including passport and driving license, the lack of legal recognition meant people had to disclose their gender history when applying for certain jobs or seeking insurance or pensions. Since the Gender Recognition Act 2004 trans people have the right to gain legal recognition in their chosen gender.

For further information see Appendix 2 (Key Legislation)

## **6.0 Recruitment and Retention**

Literature seen by applicants before interview should include the Trust equality statement. It should be made clear throughout the recruitment process, and during employment, that United Lincolnshire Hospitals NHS Trust will support members of trans staff and who may or may not be undergoing gender reassignment. The Trust will take a zero tolerance approach to discrimination, victimisation or harassment of transgender staff or staff who are perceived to be trans.

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<sup>3</sup> Gender Reassignment – A Guide for Employees, Women and Equality Unit

It is not appropriate to ask an applicant whether they are transgender. Although it may be the perception that a person is transgender, this may not be the case. They may have an intersex condition, or simply be a feminine man or a masculine woman. However, if one of the limited exceptions to the Sex Discrimination Act applies then an individual would be expected to disclose their trans status and an interviewer would be able to ask an appropriate question. (See Appendix 2)

It may be useful to equality impact assess the job requirement before the post is advertised, so that any requirement for trans people without legal recognition to self-disclose can be made clear in advance. The requirement is likely to be very rare in practice, making it easy to filter the job descriptions where an impact assessment is necessary. However any statement about the need for disclosure should be accompanied by the explicit reassurance that such information will be treated in absolute confidence, and that disclosure may not preclude eligibility for the post.

The Trust is required to carry out equality impact assessments on new and reviewed policies, processes, functions and services, by the Gender Equality Duty. The potential impact of the proposed policy etc on transgender staff should be taken into consideration.

## **7.0 Criminal Records Bureau Checks**

A member of staff having contact with patients is likely to have to apply for a Criminal Records Bureau disclosure. Part of this process involves a strict requirement for 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 of this for trans applicants and existing staff.

CRB applications need not be a problem for trans people, however. There is a special process which they can follow in order to avoid problems they would otherwise face in complying with the requirement to make truthful statements. This process does not weaken the effectiveness of the process in any way.

Further information and more detailed steps are explained on the Criminal Records Bureau web site. Applicants may telephone the CRB on 0151 676 1509 or 0151 676 1570 to discuss this matter in confidence<sup>4</sup>.

The process is as follows:

- Trans applicants for a CRB disclosure should contact CRB on one of the above numbers to clarify anything they are not sure about and ensure that the CRB know they will be using the special provisions.
- The trans applicant should complete the form presented by their employer in the normal way, except that they need not complete details

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<sup>4</sup> CRB website <http://www.crb.gov.uk/default.aspx?page=2319>

(or supply forms of evidence) that would expose their gender history to their employer.

- If they wish to leave out details that could “out” them then they should photocopy the form, ensuring they have a clear record of the application serial number
- The applicant should then immediately contact the CRB on one of the numbers above and notify them of the application number.
- The special security section of the CRB in Liverpool then have the means to intercept the application forwarded by the employer. They will ask the applicant to supply the information needed to replace that which was omitted. This is then married up so that a rigorous criminal records check can be carried out in the same way as for any other applicant.
- Disclosures sent to the employee and their employer will not reveal the applicant’s former identity unless they have an offence or caution that has been recorded in that name in police records. In this case there is no way of avoiding the disclosure of that former identity to the employer.
- If the offence itself is not serious enough to preclude employment, reassurances should be given to the applicant / member of staff in the event that the offence itself is not serious enough to preclude employment.

## **8.0 The Data Protection Act 1998 (DPA)**

Under the Data Protection Act 1998, transgender status and gender reassignment would 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. This means that it is good practice to treat such details with equal care whether an individual has a gender recognition certificate or not and whether they identify as trans.

### **8.1 Privacy**

The Gender Reassignment Act 2004 made it a criminal offence in respect of disclosing a successful applicant’s gender history to somebody else. Section 22 of the Gender Recognition Act says 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 relates 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
- 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 purpose of instituting proceedings before a court or tribunal
- the disclosure is for the purpose 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 Act

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 HR 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

## 8.2 Record Keeping

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

When 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. The Data Protection Act limits the purposes for which information may be kept. When that 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 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 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 the examining medical officer, or the person who authorises payments into a pension scheme. They do not include colleagues, line managers or third parties.

Once a person has obtained a Gender Recognition Certificate there must be no disclosure of this information. Breaches of confidentiality should be treated in the same serious manner as disclosure of personal details of any other member of staff.

Trans staff 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 individual. This means that questionnaires of this kind

should be impact assessed in advance to determine how such circumstances are going to be handled in confidence.

It is not an offence to disclose protected information if the person cannot be identified or if they give their consent. Such consent must not be forced, however.

## **9.0 Pensions**

Women born before 1950 can claim their state pension at 60 years. Everyone born after April 1955 receives it at 65 years. Pension entitlements relate to a person's legal gender and these change only when a person obtains a GRC . The person concerned should inform their pension provider when they receive a GRC . If a person retires earlier than others of their gender because of their legal sex, employers should keep this confidential. National Insurance records, apart from birth sex, are changed at the time of a name change. People will be referred to in their new gender pronouns by HM Revenue and Customs, but they will still be members of their original birth gender for National Insurance purposes, unless and until they have a Gender Recognition Certificate.

## **10.0 Managing Staff Going Through Transition**

Initially, managers (and any other person acting act 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 company'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 Human Resources team will be appointed to act as an advisor on this policy and to provide guidance and advice to trans staff and managers. As part of their role they will undergo training on trans awareness. The name and contact details of the appointed HR Officer can be found under 'Working for Us', in the 'Information for Employees – HR Contacts' section of the web site, or can be obtained by contacting the HR team at Lincoln.

### **10.1 First Meeting**

It is a good idea for the employer and employee to write 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 personnel file.

The action plan could include:

- Whether the employee is to stay in their current post or be redeployed
- The expected timescale of the medical and surgical procedures, if known
- Time off required for medical treatment, if known
- 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 or clients will be necessary
- The amendments that will need to be made to records and systems
- Whether a transsexual 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
- Agreeing the point at which the individual will commence using single sex
- facilities in their new gender (such as toilets)

After a person has successfully transitioned into their new gender role, or obtained a gender recognition certificate, it would not be appropriate to keep these records within the personnel file and they should be destroyed. It may also be useful to involve occupational health at this stage.

## **10.2 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. If so, the employer will just need to know when the disclosure is to take place and in what detail, so that they can agree and provide appropriate support. Employers should not inform colleagues, clients and the public that an employee is intending to undergo, or is undergoing, gender reassignment, without the individual's explicit consent.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender reassignment. This should be a private matter since gender reassignment will have no bearing on that person's ability to do their job. Employers should bear in mind that if such an employee is in possession of a gender recognition certificate it is unlawful to disclose their transgendered status without their consent.

Education should take place in two ways: general information about transgender issues and specific information to enable people to understand the needs of the person involved. At the point of change of gender, it is common for transsexual people to take a short time off work and return in their new name and gender role. This is often used as an opportunity to brief others. If someone has 'transitioned' prior to joining an employer or a new department, the employer should not mention their trans history. Indeed, this could constitute a criminal offence in the case of someone who has obtained a gender recognition certificate.

### 10.3 Changes Spaces and Toilets

The use of toilets and other gendered facilities can occasionally be an issue in the workplace, particularly during the early stages of transition if colleagues were familiar with the employee in their former role. The usual point for starting to use opposite gender facilities will be the day the employee starts coming to work in that role.

- As a temporary compromise measure, it may be appropriate to reserve one set of facilities for colleagues who may have strong objections to sharing facilities used by the trans employee.
- Where locker or shower facilities are open plan then it is good practice to review this and, at the least, provide 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 locker or shower facilities in order to accommodate a pre-operative member of staff in a state of undress then this 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.
- However, it is not appropriate to request that a trans person to use disabled toilet facilities (unless they have a disability requiring this), neither is it permissible to expect disabled staff to accept such arrangements.
- Special arrangements must be time limited.
- Following gender reassignment surgery or legal recognition, trans people must be supported to use all facilities designated for other members of their acquired gender.

It must be borne in mind that successful routine use of the appropriately gendered facilities is a part of what clinicians involved in supervising an employee's gender reassignment are expecting to see. This is considered a mark of the individual's social acceptance. It is also important to appreciate that if anyone is likely to feel vulnerable in the toilet then it will most likely be the trans person – being acutely aware of the incongruity in their anatomy and certainly not wishing to draw any attention to this. The individual is aiming to move away from their former gender role; they are therefore not going to behave in any way that reminds them or anyone else of that background.

Finally it is never acceptable to require someone undergoing gender reassignment to use toilets or other facilities designated for members of their birth gender. Under those circumstances employers would not be able to guarantee the employee's safety.

## **10.4 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. Colleagues may also benefit from advice in how to contribute too.

## **10.5 Time Off for Treatment**

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. However, individual rights under the Disability Discrimination Act 1995 must be considered where the individual has been diagnosed as suffering from 'Gender Dysphoria' or 'Gender Identity Disorder' and the condition is likely to last for more than twelve months, lasted twelve months or will remain with the individual for the rest of their life. An employer must not, however, treat the person any less favourably than he or she treats, or would treat a person absent due to illness or for some other reason where it would be reasonable to allow a similar amount of time off work.

## **Appendix 1**

### **Guide to Terms**

#### **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 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 necessarily tied to erotic activity. Cross-dressing is not indicative of sexual orientation.

#### **Sex**

The 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.

#### **Gender Identity**

One's internal, personal sense of being a man or a woman (or a boy or girl.) For transgender people, their birth-assigned sex and their own internal sense of gender identity do not match.

#### **Gender Expression**

External manifestation of one's gender identity, usually expressed through "masculine," "feminine" or gender variant behaviour, 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.

## **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, lesbian, gay, or bisexual. For example, a man who becomes a woman and is attracted to other women would be identified as a lesbian.

## **Transgender**

An umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. Transgender people may identify as female-to-male (FTM) or male-to-female (MTF). Use the descriptive term (*transgender*, *transsexual*, *cross-dresser*, FTM or MTF) preferred by the individual. Transgender people may or may not choose to alter their bodies hormonally and/or surgically.

## **Transsexual**

An older term which originated in the medical and psychological communities. Many transgender people prefer the term "transgender" to "transsexual." Some transsexual people still prefer to use the term to describe themselves. However, unlike *transgender*, *transsexual* is not an umbrella term, and many transgender people do not identify as transsexual. It is best to ask which term an individual prefers.

## **Transvestite**

DEROGATORY see *Cross-Dressing*

## **Transition**

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 alteration.

## **Gender Reassignment Surgery (GRS)**

Refers to surgical alteration, and is only one small part of transition (see *Transition* above). Preferred term to "sex change operation." Not all transgender people choose to or can afford to have Gender Reassignment Surgery.

## **Intersex**

Describing a person whose biological sex is ambiguous. There are many genetic, hormonal or anatomical variations which make a person's sex ambiguous (i.e., Klinefelter Syndrome, Adrenal Hyperplasia). Parents and medical professionals usually assign intersex infants a sex and perform surgical operations to conform the infant's body to that assignment. This practice has become increasingly controversial as intersex adults are speaking out against the practice, accusing doctors of genital mutilation.

### **Key Legislation**

#### **Human Rights Act 1998**

The Human Rights Act came into force in 2000. The Act enables people to take cases about human rights to a UK court. There are 16 basic rights in the Human Rights Act. Of particular relevance are:

#### **Article 3 Prohibition of Torture**

It is forbidden to subject any person to torture or to any treatment that is inhuman or degrading. Inhuman treatment is treatment that is less severe than torture but still causes serious physical and/or mental pain or suffering. Degrading treatment is treatment that arouses feelings of fear, anguish and inferiority capable of humiliating and debasing the victim.

#### **Article 8 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. The right to a private life means that a person has the right to live their own life with such personal privacy as is reasonable in a democratic society, taking into account the rights and freedoms of others. Any interference with a person's body or the way the person lives their life is likely to affect their right to respect for their private life. This could include freedom to choose how one looks and dresses.

#### **Article 12 Right to Marry**

The European Court of Human Rights interpreted Article 12 as providing post operative transgender people with the right to marry in their acquired gender. The Gender Recognition Act allows people to obtain legal recognition in their new gender, and once they have obtained such recognition they can marry a person of the opposite gender.

#### **Article 14 Prohibition of Discrimination**

Prohibition from discrimination gives people protection from discrimination in relation to all rights guaranteed under the Convention. Everyone is entitled to equal access to those rights. Article 14 only works to protect people from different treatment in exercising their other convention rights. It does not give people a general protection from different treatment in all areas of their life.<sup>5</sup>

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<sup>5</sup> Human Rights: Human Lives, A Handbook for Local Authorities, Department for Constitutional Affairs

## **Sex Discrimination Act (SDA) 1975 as amended by Sex Discrimination (Gender Reassignment) Regulations 1999**

In employment and vocational training It is unlawful to discriminate against someone on the grounds of gender reassignment. It is unlawful to discriminate against a person if they:

- intend to undergo gender reassignment, or
- currently undergoing gender reassignment, or
- has at some time in the past undergone gender reassignment.

This ensures that the initial stage is covered by the legislation, when an individual indicates an intention to commence gender reassignment. It is not necessary for all three circumstances to apply. Discrimination in this context means treating a trans person less favourably than you treat (or would treat) another employee who is not undergoing gender reassignment (or contemplating it etc). The SDA also places a duty on employers to protect workers from harassment and victimisation on the grounds of gender reassignment. The employer is liable for discriminatory acts by anyone acting on their behalf, whether or not it was done with their knowledge, unless the employer can show they had taken reasonable steps to prevent such actions. Where a person has undergone gender reassignment, that person has the protection of the SDA under their new gender identity.

## **Gender Recognition Act 2004**

The Gender Recognition Act 2004 gives legal recognition in their acquired gender to trans 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 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, are not a pre-requisite to obtaining a GRC.

## **Changes to Legal Identity**

The gender recognition process ensures that trans people are afforded all the rights and responsibilities appropriate to that gender. If a trans person is successful in applying for gender recognition, and they are unmarried, they will get a full gender recognition certificate (GRC), and if their birth was registered in the UK will be automatically entered on the Gender Recognition Register held by the Registrar General. Their original birth register entry will be marked, confidentially, to indicate that they have become recognised in their acquired gender. They will then be able to marry a person of the opposite gender and be eligible for the state retirement pension and other benefits at the age appropriate to their new gender. If their birth

has been registered in the UK they will receive a new birth certificate, in their acquired name and gender. Individuals who are married cannot receive a full GRC because marriage is not permitted between two members of the same sex. They may, however, apply to a Gender Recognition Panel for an interim GRC. This enables them to obtain a full GRC after their marriage is annulled, and provides a new ground for annulment to ease the process.

## **Privacy**

Section 22 of the Gender Recognition Act 2004, gives people applying for or in receipt of a GRC extended privacy rights. Knowledge about a person's gender recognition is regarded as 'protected information'. Anyone who acquires such knowledge in the course of their official duties and then passes it on to a third party without the trans person's consent, may be prosecuted and fined up to £5,000 and/or be imprisoned for up to six months. Official duties include employment, supply of services and union organisation or representation. It is imperative that anyone who acquires such knowledge knows their legal liabilities and is aware that disclosure, even to a line manager, could mean they have committed a criminal offence under section 22 of the Gender Recognition Act 2004.

## **Equality Act 2006**

The Gender Equality Duty (GED ) requires all public bodies to:

- eliminate unlawful discrimination and harassment
- promote equality of opportunity between men and women, including trans men and women.

This is known as the 'general duty'. Under the general duty, the Trust is required to be proactive. This means that we must actively promote equality between trans people and non-trans people of any gender. Prior to this, the onus was on individuals who were discriminated against to make complaints to employment tribunals. Now the onus is on the public bodies to take action to prevent discrimination. In addition to the general duty, the law places a number of specific duties on public bodies to:

- prepare and publish a Gender Equality Scheme showing how they intend to fulfil the general and specific duties and set out their gender equality objectives
- gather and use information on how the Trust's policies and practices affect gender equality in the workforce and in the delivery of services
- consult workers, students and other stakeholders and take account of relevant information in order to determine their gender equality objectives
- carry out impact assessments to assess the impact of current and proposed policies and practices on gender equality
- implement the actions set out in their Gender Equality Scheme within three years
- report against the scheme every year and review the scheme at least every three years.

## **Sex Discrimination Act 1975 (Amendment of Legislation) Regulations 2008**

The Regulations extend the protection from discrimination on grounds of gender reassignment to the provision of goods, facilities, services and premises and make it explicit that sexual harassment, sex harassment and gender reassignment harassment in access to and the provision of goods, facilities, services or premises are unlawful.

The Act says that it is unlawful for an employer to discriminate against an employee, job applicant or contractor on the grounds of that person's sex, or gender reassignment, or because they are married or in a civil partnership. It applies equally to men and women. The employment provisions of the Act cover recruitment, transfer, training and promotion, access to work-related benefits, facilities and services, dismissal, and any other detriment. It is also unlawful for an employer to instruct someone else to do something discriminatory – for instance, telling an employment agency not to hire a trans person. Pressure to discriminate is also unlawful – for example employees threatening not to work unless their employer dismisses a colleague who has decided to undergo gender reassignment.

### **Harassment**

Harassment of an individual on the ground of gender reassignment – either by their employer or by other employees – will usually be a form of unlawful discrimination. Such discrimination should be dealt with in the same way as harassment against any other member of staff, for example on the basis of their sex or race.

### **Victimisation**

The Sex Discrimination Act says it is unlawful to victimise someone by treating them less favourably because they have made a complaint about gender reassignment discrimination, just as it is unlawful to victimise someone for asserting their rights because of, say, sex discrimination. It is equally unlawful to victimise someone who gives evidence on behalf of a person who has complained of unlawful discrimination.

### **Liability**

An employer is liable for any act done by an employee in the course of their employment (with or without the employer's knowledge or approval), unless the employer can show that he or she had taken such steps as were reasonably practicable to stop the employee from doing the particular act or acts of that kind. For example, an employer might be able to show that he or she provided equal opportunities training to all employees and deals thoroughly with any discrimination complaints. Employees remain individually liable for their own discriminatory acts, even where the organisation is potentially liable also.

## **Exceptions to the Discrimination Legislation**

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 it is reasonable 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).
- 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 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, the employer has 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.

None of this applies to someone with a full gender recognition certificate. If someone has a full gender recognition certificate 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.

## Appendix 3

### Support and Information

#### Internet sources –

The Transgender Zone <http://www.transgenderzone.com/>

Press for Change <http://www.pfc.org.uk/>

The Gender Trust <http://www.gendertrust.org.uk/>

The Crissy Wild Library <http://www.crissywild.com/>

Depend <http://www.depend.org.uk/>

Equality and Human Rights Commission  
<http://www.equalityhumanrights.com/en/Pages/default.aspx>

FTM Network <http://www.ftm.org.uk/>

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

The Looking Glass Society <http://www.looking-glass.greenend.org.uk/>

Mermaids <http://www.mermaids.freeuk.com/>

#### Support Groups –

The Beaumont Trust Helpline 07000 - 287878 / B.M. Charity, London, WC1 N 3XX  
or [beaumonttrust@gmail.com](mailto:beaumonttrust@gmail.com)

Boston Belles

#### Further Reading -

Transgender Experiences – Information and Support  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_081579](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_081579)

Transgender Issues for Older People  
<http://www.ageconcern.org.uk/AgeConcern/1057B44338A147ED86A2BC90F8796A17.asp>

**Appendix B - Equality Impact Assessment Tool**

United Lincolnshire Hospitals



NHS Trust

**EQUALITY IMPACT ASSESSMENT**

Name of the policy, service or function being assessed:	Policy on Supporting Transgender Staff
Aim of the policy	To ensure that transgender staff are not discriminated against because of their gender status, and that the Trust recruits and retains a diverse workforce.
Which population or groups the policy (or section) is intended to benefit and how	Transgender employees will benefit from the policy through the Trust's clear commitment to promoting equality for transgender people.
Related policy areas that may be affected by changes in this policy	
Directorate	Human Resources
Date Impact Assessment completed	20 <sup>th</sup> July 2008
Is this a policy, service or function?	Policy
Is this a new or existing policy, service or function?	New policy
Names and roles of the people carrying out the Impact Assessment	Rachel Taylor (Diversity Manager) Boston Belles (Transgender Support Group) Policy Working Group

**Manager:**.....

**Signature:** .....

**Date:** .....

### Step 1 Screening

	Race	Disability	Gender	Age	Sexual Orientation	Religion or Belief
Do different groups have different needs, experiences, issues and priorities in relation to the proposed policy	No	No	Yes	No	No	No
Is there potential for or evidence that the proposed policy will promote equality of opportunity for all and promote good relations between different groups	No	No	Yes	No	No	No
Is there potential for or evidence that the proposed policy will affect different population groups differently (including possibly discriminating against different groups)	No	No	Yes	No	No	No
If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	N/A	N/A	N/A	N/A	N/A
What alternatives are there to achieving the policy/guidance without the impact? Can we reduce the impact by taking different action?						

**Impact:** Medium

**Low - go to step 4**

**Medium - go to step 2**

**High - go to step 2**

## Step 2 – Partial Equality Impact Assessment

2. In carrying out a partial impact assessment you may need to consult with any relevant groups (e.g. representative groups, staff groups).

Write short notes to explain why you have drawn your conclusions including any evidence (of whatever type) that you have to support your assessment:

**Do different groups have different needs, experiences, issues and priorities in relation to the proposed policy:**

Race:

Religion or belief:

Age:

Gender: Transgender employees may face discrimination in the workplace. They may also suffer bullying and harassment (Press for Change). There are data protection and privacy and dignity issues that specifically relate to trans staff, that are not covered by the Trust equal opportunities statement.

Disability:

Sexual orientation:

**Is there potential for or evidence that the proposed policy will promote equality of opportunity for all, eliminate discrimination and promote good relations between different groups:**

Race:

Religion or belief:

Age:

Gender: The policy should provide robust protection from discrimination for trans employees, and give managers guidelines to support trans staff appropriately and sensitively.

Disability:

Sexual orientation:

**Is there potential for, or evidence that the proposed policy will affect different population groups differently (including possibly discriminating against different groups)**

Race:

Religion or belief:

Age:

Gender: The policy will have a positive effect on trans staff.

Disability:

Sexual orientation:

**If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?**

Race:

Religion or belief:

Age:

Gender:

Disability:

Sexual orientation:

**What alternatives are there to achieving the policy/guidance without the impact? Can we reduce the impact by taking different action?**

Race:

Religion or belief:

Age:

Gender:

Disability:

Sexual orientation:

**At this stage are there people who may be affected by the policy area whose views and experiences should be sought? (e.g. staff groups, representative groups):**

Race:

Religion or belief:

Age:

Gender: The policy has been circulated to Boston Belles, a transgender support group. Amendments were made to the policy based on their feedback.

Disability:

Sexual orientation:

Indicate whether you believe the policy requires a full impact assessment. If you still have concerns about the impact of the policy, continue to a full impact assessment.

Full Impact Assessment required: No

Yes – go to Step 3

No - go to Step 4

Where a policy has high impact, address the identified actions within a year. You should consider the following questions when planning how to monitor the new policy:

How will the policy be monitored after full implementation?	Use of the policy and contact made with reference to the policy with the named HR Officer will be monitored annually.
Have you planned reviews of the policy? If so, how often and who will be responsible?	The policy will be reviewed every 2 years.
Will you carry out a further impact assessment and consultation to check if the policy is not resulting in adverse impact? If so, when is this likely?	The policy will be impact assessed after one year of implementation. Complaints, grievances and other feedback relating to the policy will trigger further impact assessment before one year if necessary.

The Trust will publish the results of the assessments, consultations and monitoring carried out to meet the duty and make these available to the public.

Summaries of the impact assessments will be published annually in the Annual Diversity Report and will be published on the Trust Internet site.

For advice in respect of completing this process please contact the Diversity Manager, Rachel Taylor on [Rachel.Taylor2@ulh.nhs.uk](mailto:Rachel.Taylor2@ulh.nhs.uk) or telephone on 01476 464278.