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## SUPPORTING TRANS STAFF PROCEDURE

### Introduction and Aim

This procedure should be read in conjunction with the University Health Board (the UHB) Equality, Diversity and Human Rights Policy. The guiding principle supporting this procedure is to create a fair and equal culture in which staff are protected from discrimination, harassment and victimisation on the grounds of their trans status. A trans 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.

It is the intention of Cardiff and Vale University UHB to protect the right of all staff, volunteers, applicants and members of the public to be treated with fairness, dignity, respect and professionalism. The UHB will ensure that anyone considering undergoing, currently undergoing or who has undergone gender reassignment and those with a non-binary identity will feel valued respected and understood and as a result be treated fairly.

### Objectives

This procedure is designed to:-

- Create an open, diverse and supportive work environment that meets the needs of all Trans\* people, including those who identify as non-binary and supports their aspirations.
- Assist managers in supporting staff who have changed their gender identity before joining the organisation where support is needed or requested.
- Assist managers in supporting staff who may be considering changing or are changing their gender identity whilst employed by the UHB.
- To support trans staff, their managers, colleagues and all other staff in maintaining a professional working environment that embraces diversity, and promotes fairness and equity for all.
- Provide general advice and guidance to build understanding around trans issues and gender identity;

### Scope

This procedure applies to all staff who would consider themselves to be Trans, including those staff considering undergoing, currently undergoing or having undergone the gender reassignment process (or any part of the reassignment process), those who identify as non-binary, 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.

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<b>Equality Impact Assessment</b>	An Equality Impact Assessment has not been completed. This is because the procedure has been written to support the implementation of the Equality, Diversity & Human Rights Policy. The Equality Impact Assessment completed for the policy found there to be an overall positive impact.
<b>Health Impact Assessment</b>	A Health Impact Assessment has not been completed. This is because it is not required for this procedure
<b>Documents to read alongside this Procedure</b>	Equality, Diversity and Human Rights Policy NHS Wales Dignity and Work Policy NHS Wales Grievance Policy Recruitment and Selection Policy Redeployment Policy and Procedure Retirement Policy NHS Wales Disciplinary Policy NHS Wales Dress Code <a href="#">NHS Wales Managing Attendance Policy</a>
<b>Approved by</b>	Employment Policy Sub Group
<b>Groups Consulted</b>	The procedure was placed on the intranet for consultation Staff representatives-BDA UHB Rainbow LGBT+ FFlag Network Local Partnership Forum
<b>Outcome of Consultation</b>	The consultation found that the procedure would support and demonstrate the UHB commitment to equality, diversity and human rights.
<b>Accountable Executive or Clinical Board Director</b>	Chief Operating Officer
<b>Author(s)</b>	Equality Manager

**Disclaimer**

**If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Governance Directorate](#).**

<b>Summary of reviews/amendments</b>			
<b>Version Number</b>	<b>Date Review Approved</b>	<b>Date Published</b>	<b>Summary of Amendments</b>
1	12.01.2016	03.02.2016	New document
2	10.07.2019	16.07.2019	Updated to ensure compliance with legislation/policy, good practice and update terminology. The key changes are: the replacement of the word transgender to trans where appropriate including in the title; the addition of the word non-binary in

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			the background and responsibilities section in section 10, Appendix 1, pages 19-22.
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## 1. BACKGROUND

For the purpose of this procedure, the term “trans” will be used throughout. Trans is an umbrella term used to describe a whole range of people whose gender identity and/or gender expression differs in some way from the gender assumptions made about them when they were born. A full list of gender terminology and an explanation as to what the terms mean is available in **Appendix 1**

A trans\* employee is an employee whose gender identity or gender expression differs from the gender assumptions made about them when they were born. 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 in which they work and may express their gender differently on a part-time basis in non-work situations. (Please see **Appendix 1**)

Many trans employees face discrimination before, during and after the process of gender reassignment. Most trans 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 – 42% of trans people not living permanently in their preferred gender role stated they are prevented from doing so because they fear it may threaten their employment status (The Equalities Review UK - Engendered Penalties 2007)

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).

## 2. RESPONSIBILITIES

Line managers are responsible for ensuring that this procedure is applied, as necessary, when recruiting staff and for staff they are accountable for. They are also expected to monitor the working environment to ensure that the rights of trans employees are upheld.

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

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

A trans 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 Head of Workforce and Organisational Development (HOWOD), who will attempt to negotiate an acceptable outcome with the parties.

The Employee Health and Well-being Service provides a confidential support service to all staff on a self referral basis, and is available as a first point of contact or for additional support.

### **3. THE LEGAL FRAMEWORK**

The Equality Act 2010 makes it unlawful for an employer to discriminate against or harass trans people. This means those having the protected characteristic of gender reassignment. However 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.

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 trans 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. (Please see page 25).

Gender reassignment is a personal process which involves a person expressing their gender identity 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

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and to treat them accordingly.

#### 4. LEGISLATIVE DEFINITIONS OF UNLAWFUL BEHAVIOUR RELATING TO GENDER REASSIGNMENT

- **Direct discrimination** is 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** is 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** is 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** is treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting someone who is doing so.

#### 5. RECRUITMENT AND SELECTION

The UHB 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 (Please see **Appendix 2**), 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.

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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 trans 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 trans status must maintain full confidentiality in relation to this issue as indicated in the relevant legislation. (Please see page [24/27](#)).

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" (Data Protection Act) 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. (Please see page 23)

## **6. DISCLOSURE AND BARRING SERVICES (DBS)**

For those staff requiring a Disclosure and Barring Service disclosure, part of the 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 for trans applicants and existing Transsexual staff who have legally changed their name.

The DBS has a confidential checking process for trans 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

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follow this special DBS procedure. It is good practice to make this information available to all staff and applicants needing a DBS check.

**Trans applicants** – [sensitive@dbs.gsi.gov.uk](mailto: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>

## 7. RECORD KEEPING

Trans 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 annulled.

A trans 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 Head of Workforce and Organisational Development (HOWOD) should advise on where records are maintained that need to be changed. Managers and HOWOD’s 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.

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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.

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

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.

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.

## 7.1 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 trans 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 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.

## 7.2 Birth Certificates

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Someone who has changed gender will be able to obtain a new birth certificate which will not disclose the fact that they have changed gender.

### **7.3 Work Permits**

Staff who are working in the UHB on a work permit or student visa must 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.

### **7.4 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 be members of 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 trans status.

### **7.5 Pension**

The date you reach State Pension age depends on when you were born. For men born before 6 December 1953, the current State Pension age is 65. For women born after 5 April 1950 but before 6 December 1953, their State Pension age is between 60 and 65.

Under the Pensions Act 2011, women's State Pension age will increase to 65 between April 2016 and November 2018.

From December 2018 the State Pension age for both men and women started to increase to reach 66 in October 2020.

However, the government has announced that the increase to 67 will now take place between 2026 and 2028. This change is not yet law and will require the approval of Parliament. The Government is considering how the State Pensions should be changed in the future. Any changes will be incorporated as appropriate.

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.

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A trans person who receives a GRC and thereby a new birth certificate will be treated according to their acquired gender for state pension purposes. Trans 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 (ie, 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).

For pensions information on this issue go to:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/372462/gender-recognition-pensions-and-benefits.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372462/gender-recognition-pensions-and-benefits.pdf)

## **7.6 Professional Registration**

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.

## **8. MANAGING STAFF GOING THROUGH 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 change 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, Equality Manager, a Staff Representative, a Rainbow LGBT+ FFlag Network colleague or the Employee Health and Wellbeing Service. All must maintain confidentiality except as agreed otherwise by the

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individual. The UHB recognises that it can take a long time for an individual to decide to live in a gender different from the one recorded on their birth certificate. Support and assistance will be given to individuals who have taken this decision during the course of their employment. We will also support their work colleagues as and when appropriate. The UHB does not accept discrimination against, victimisation or harassment of trans employees.

Initially, managers (and any other member of staff acting as a point of contact) should be made aware of this Procedure, 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 UHB'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. The employee can be supported during these discussions by a colleague or staff representative. Our Rainbow LGBT+ FFlag Network comprises of colleagues who can provide additional mentoring support and help.

For further advice please contact the HR Advisory Team or the UHB Equality Manager in the first instance.

## 8.1 The First Meeting

The employee will guide the speed at which the transition will progress. The nominated contact and employee 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. (Please see the Redeployment Policy and Procedure). It is inappropriate to redeploy someone who wishes to transition just because you think it is in their best interests, but a request for redeployment should be considered at any time in order to fully support the member of staff. N.B. Redeployment can only take place if there is a suitable post available
- The expected timescales of and time off for the medical and/or surgical procedures, if known, in line with our normal absence procedures. For other treatments including voice training and electrolysis, requests for time off should be treated sympathetically. Flexible working should be considered along with reasonable requests for unpaid leave. 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

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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
- Whether a trans 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 and Wellbeing at this point if they are not already involved.

## **8.2 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.

## **8.3 Uniform / Dress Code**

Any dress code forms part of the contract of employment. The UHB adheres to the All Wales Dress Code. Some flexibility must be allowed to accommodate the change of gender role, but the trans 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 UHB, 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.

## **8.4 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. However, the UHB must not inform colleagues, clients or the

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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 trans person by their new name and use pronouns appropriate to their acquired gender.

Colleagues should be given general information about trans issues (available on the Equality and Diversity pages of the UHB Intranet site [http://nww.cardiffandvale.wales.nhs.uk/portal/page?\\_pageid=253,1552413,253\\_31108774&\\_dad=portal&\\_schema=PORTAL](http://nww.cardiffandvale.wales.nhs.uk/portal/page?_pageid=253,1552413,253_31108774&_dad=portal&_schema=PORTAL)

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.

## **8.5 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 (eg 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.

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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 UHB will ensure that any arrangements for toilet/shower/changing facilities are satisfactory to the trans 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.

## **8.6 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 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.

## **8.7 Time off Work**

Trans 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.

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 NHS Wales

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Managing Attendance Policy 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 and Wellbeing 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.

## **9 GRIEVANCE**

Any member of staff who has a grievance arising from the application of this procedure should raise it through the NHS Wales Grievance Policy with advice from Workforce and OD.

## **10. 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/>

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Equality and Human Rights Commission – [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

A-GENDER – <http://www.agender.org.uk> - the employee support network for trans 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](http://www.unison.co.uk/out)

A confidential national trans caucus that any trans member can join by emailing UNISON [out@unison.co.uk](mailto: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 Unite Guide “Combating Homophobia and Achieving Equality for LGBT Workers – A Negotiator’s Guide” <http://www.unitetheunion.org/>

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 trans. [www.gendertrust.org.uk](http://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](http://www.ulia.co.uk)

[The Workplace and Gender Reassignment](#) – A Guide for Staff and Managers, Agender, 2011

Unique Transgender a social and mutual support network, serving North Wales and Cheshire. [www.unique.org.uk](http://www.unique.org.uk)

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

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## Appendix 1 - Gender Terminology

<b>Term</b>	<b>Definition</b>
Sex	Assigned to a person on the basis of primary sex characteristics (genitalia) and reproductive functions.
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	A person's internal sense of their own gender, whether male, female or something else (see non-binary below), which may or may not correspond to the sex assigned at birth.
Non-binary	An umbrella term for a person who does not identify as only male or female, or who may identify as both.
Gender Dysphoria	Used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity. This is also the clinical diagnosis for someone who doesn't feel comfortable with the gender they were assigned at birth.
Transsexual	This was used in the past as a more medical term (similarly to homosexual) to refer to someone who transitioned to live in the 'opposite' gender to the one assigned at birth. This term is still used by some although many people prefer the term trans or transgender.
Trans	An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, bi-gender, trans man, trans woman, trans

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masculine, trans feminine and neutrois.

Trans Man*	A term used to describe someone who is assigned female at birth but identifies and lives as a man. This may be shortened to trans man, or FTM, an abbreviation for female-to-male.
Trans Woman	A term used to describe someone who is assigned male at birth but identifies and lives as a woman. This may be shortened to trans woman, or MTF, an abbreviation for male-to-female.
Transitioning	The steps a trans person may take to live in the gender with which they identify. Each person's transition will involve different things. For some this involves medical intervention, such as hormone therapy and surgeries, but not all trans people want or are able to have this. Transitioning also might involve things such as telling friends and family, dressing differently and changing official documents.
Gender reassignment	Another way of describing a person's transition. To undergo gender reassignment usually means to undergo some sort of medical intervention, but it can also mean changing names, pronouns, dressing differently and living in their self-identified gender. Gender reassignment is a characteristic that is protected by the Equality Act 2010, and it is further interpreted in the Equality Act 2010 approved code of practice. It is a term of much contention and is one that Stonewall's Trans Advisory Group feels should be reviewed.
Transphobia	The fear or dislike of someone who identifies as trans, including the denial/refusal to accept their gender identity.
Gender Expression	How a person chooses to outwardly express their

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gender, within the context of societal expectations of gender.

A person who does not confirm to societal expectations of gender may not, however, identify as trans

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 suggestive 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. Trans 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.

Pronoun

Words used to refer to people’s gender in conversation - for example, ‘he’ or ‘she’. Some people may prefer others to refer to them in gender neutral language and use pronouns such as they/their and ze/zir.

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## APPENDIX 2 - Objective Justification

An employer could discriminate against a trans 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.**

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“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

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## **APPENDIX 3 - Additional Legislation Information**

### **1.1 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.

### **1.2 THE DATA PROTECTION ACT 1998 (DPA)**

Under the Data Protection Act 1998, trans 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.

### **1.3 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:

#### **1.3.1 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).

#### **1.3.2 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:

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### **1.3.3 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.

### **1.3.4 Article 10 The Right to 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 information and ideas without interference by public authorities.

### **1.3.5 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.

### **1.3.6 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.

## **d. 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.

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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

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- 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 if 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.

This procedure 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.

<http://www.gires.org.uk/assets/Workplace/transition-at-work-Sept2013.pdf>

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

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/308050/The\\_Workplace\\_Guide\\_Nov\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308050/The_Workplace_Guide_Nov_2013.pdf)

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## Appendix 4: More Support and Information Outside Work

### Gender Identity Research and Education Society (GIRES)

[www.gires.org.uk](http://www.gires.org.uk)

GIRES' primary mission is to improve the circumstances in which trans people live, by changing the way that society treats them. It aims to generate supportive attitudes among all those who can make those improvements happen, including politicians, other policy makers, clinicians, the providers of commercial and government services including the police, teachers, employers, and journalists, as well as other family members. In the healthcare field, nationally and internationally, GIRES provides training for professionals and medical organisations. The charity has contributed to the development and promotion of good practice guidelines, commissioning policies, e-learning, journal articles and literature regarding the treatment of gender dysphoria in children, adolescents and adults, and their care in clinical environments.

**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 - the public service union [www.unison.org.uk/out](http://www.unison.org.uk/out)

They represent staff who provide public services, whether they work in the public, private or voluntary sector. Member benefits include workplace support, a helpline open until midnight – on 0845 355 0845 - and access to their welfare charity. They have a flourishing lesbian, gay, bisexual and trans members group, which meets nationally and locally. They also have a national Trans\* network which meets annually and elects to the reserved seats for trans\* members on the national LGBT committee. They strive to tackle transphobic prejudice and discrimination at work and in society.

### Unison National Trans Caucus

A confidential national trans caucus that any trans member can join by emailing UNISON [out@unison.co.uk](mailto: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](http://www.amicustheunion.org.uk) (now called unite the union)

**Trans – A Practical Guide for the NHS** (Department of Health publication)  
<http://www.nhs.uk/Livewell/Transhealth/Pages/Transoverview.aspx>

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### **Welsh Health Specialised Gender Identity Service Protocol**

Reference to the current Welsh Health Specialised Gender Identity Service Protocol for patients registered with a GP in Wales

<http://www.wales.nhs.uk/sites3/documents/898/specialies%20services%20policy%20gender%20services%20cp21%20approved%20120925.pdf>

### **Equality and Human Rights Commission**

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### **The Equality Advisory and Support Service**

<http://www.equalityadvisoryservice.com/>

### **World Professional Association for Transgender Health**

2012 Standards of Care for the Health of Transsexual, Transgender and gender nonconforming people

[www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf](http://www.wpath.org/documents/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf).

### **UK standards of care**

Good practice guidelines for the assessment and treatment of adults with gender dysphoria Royal College of Psychiatrists London

<http://www.rcpsych.ac.uk/files/pdfversion/CR181.pdf>

### **Trans mental health study 2012**

[www.scottishTrans.org/wp-content/uploads/2013/03/Trans\\_mh\\_study.pdf](http://www.scottishTrans.org/wp-content/uploads/2013/03/Trans_mh_study.pdf)

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

**The Gender Trust** is a registered charity which specifically helps adults who are transsexual, gender dysphoric or trans. [www.gendertrust.org.uk](http://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](http://www.ulia.co.uk)

**Unique Transgender Network- a Social and Mutual support network** serving North Wales and Cheshire . [www.unique.org.uk](http://www.unique.org.uk)

**Stonewall Cymru** – [www.stonewallcymru.org.uk/workplace](http://www.stonewallcymru.org.uk/workplace) (for advice on sexual orientation issues)

### **Third Sector Local Trans\* Support Groups in Wales**

Local Groups can prove invaluable in providing much needed on-going mutual support and friendship. They are particularly helpful in assisting with many aspects of styling, dressing appropriately, wig / hair care, make-up, department, sourcing large and small size clothes and shoes etc.

Signposting the best local services, such as friendly businesses, churches, social and sports facilities, and where to find further information / support are

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particularly important to the wellbeing of trans\* people.  
They can also provide reassurance and mentoring from having travelled the same or a very similar pathway.

GIRES 2011 Guidelines for employers - Legal protection and good practice for gender variant, transsexual and trans 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

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/308050/The Workplace Guide Nov 2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308050/The_Workplace_Guide_Nov_2013.pdf)