

# Gender Diversity Policy Guide for Employers 2019



## **Looking after trans, non-binary and non-gender employees in the workplace**

### CODE of CONDUCT

Our organisation is proud of its equality and diversity policy and its commitment to fairness and respect towards its employees and its service users.

We treat everyone with respect and have particular regard for the 'protected characteristics' under the Equality Act 2010:

age, disability,  
gender reassignment,  
marriage and civil partnership,  
pregnancy and maternity, race,  
religion or belief, sex or sexual orientation.

We have a zero tolerance policy towards discriminatory language or actions that could create a hostile environment.

We do not accept behaviour that amounts to harassment or exclusion of any individual.

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## **GUIDANCE on EMPLOYMENT of TRANS PEOPLE**

## Executive summary

This document provides a guide for employers on supporting trans people, including those who are non-binary, non-gender and intersex, in the workplace<sup>1</sup>. Trans people are frequently disadvantaged at work, although this is not always deliberate. All existing and new practices and policies must be scrutinized to ensure that they take account of the impact they may have on such minority groups.

People work better if they can be themselves so making trans people welcome makes good business sense. The broad range of identities that are now emerging in our society may amount to about 4-5% of the population.<sup>2,3</sup> Therefore, the workforce may include a similar proportion of people who do not conform to the typical 'man' or 'woman' binary model, who may transition, or wish to do so.<sup>4, 5, 6</sup>



Research indicates that despite the growing understanding of gender differences, roughly 50 % of those who would like to transition, or to express their gender differently, feel unable to do so because they fear a transphobic reaction from their employers and co-workers. This causes great stress so they are unlikely to perform to the best of their ability. It is recognised that a workplace in which diversity, including different gender identities, is celebrated, ensures that valuable staff are recruited and retained - an approach that benefits everyone, not just the groups targeted.

Trans employees are specifically protected by virtue of having the 'protected characteristic' of 'gender reassignment' under the Equality Act 2010 (EA); in addition, their privacy is protected under the Data Protection Act 2018 (DPA), the General Data Protection Regulations 2018 (GDPR), and the Human Rights Act 1998 (HRA, public sector). A minority of trans people are also protected under the Gender Recognition Act 2004.

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<sup>1</sup> Throughout this document, the description 'trans' is used to include all those whose gender identity (man, woman, somewhere in between, or fluctuating) does not match the sex assumed at birth (male or female) on the basis of genital appearance. N.B. sometimes the plus sign (e.g. LGBTQI+) is used to indicate the wider range of groups, whose minority status puts them at similar risks of discrimination, prejudice and hate crime etc.

See Terminology, p24.

<sup>2</sup> Kuyper, L., & Wijzen, C. (2014). Gender identities and gender dysphoria in the Netherlands. *Archives of Sexual Behavior*, 43, 377–385.

<sup>3</sup> Van Caenegem, E., Wierckx, K., Elaut, E., Buysse, A., Dewaele, A., Van Nieuwerburgh, F. T'Sjoen, G. (2015). Prevalence of gender nonconformity in Flanders, Belgium. *Archives of Sexual Behavior*, 44(5), 1281–1287. WHO (World Health Organisation).

<sup>4</sup> Glen F, and Hurrell K. (2012) Technical note: Equality and Human Rights Commission. EHRC warn that this result in a cohort of 10,000, cannot necessarily be extrapolated to the whole population. [https://www.equalityhumanrights.com/sites/default/files/technical\\_note\\_final.pdf](https://www.equalityhumanrights.com/sites/default/files/technical_note_final.pdf)

<sup>5</sup> Clark, TC, Lucassen, MFG, Bullen, P, Denny, SJ, Fleming, TM, Robinson, EM, Rossen, FV. New Zealand (2014) Society for Adolescent Health and Medicine. Published by Elsevier Inc. 55, Issue 1, Pages 93–99, 1.2% reported being transgender, 2.5% reported being not sure about their gender. [www.jahonline.org/article/S1054-139X%2813%2900753-2/abstract](http://www.jahonline.org/article/S1054-139X%2813%2900753-2/abstract)

<sup>6</sup> Gender Identity Services report that the numbers being referred to them are rising at 20% p.a., and at 50% p.a. among children and adolescents (2018/2019)

The employer is responsible for the following tasks:

- looking at existing policies and protocols and changing them where they might disadvantage a trans, non-binary or non-gender person; this will help to avoid 'indirect discrimination' (see Law and Good Practice);
- providing a policy for the transition at work, and the employment, of trans staff, so that there is no risk of direct discrimination against trans people in the workplace (see Law and Good Practice, and Memorandum of Understanding);
- taking 'positive action' to recruit from these minority groups (see Law and Good Practice);
- introducing a visible and publicised Code of Conduct in relation to all 'protected characteristics';
- introducing training for staff about how to interact respectfully with trans people who are colleagues, customers, or with whom the employer has other relevant business dealings; running celebratory events to support trans staff e.g. LGBT<sup>+</sup> History month (see Awareness Training and Celebrating Diversity);



## 1. Summary of the Law and Good Practice

**The Equality Act 2010** (EqA) protects trans people, who are described in law, as those 'proposing to undergo, undergoing or having undergone a process (or a part of a process)' to transition socially, using new names and pronouns, and expressing themselves differently, for instance, in terms of dress and hairstyle. They may or may not have medical treatment. Although non-binary, non-gender and intersex people are not *explicitly* protected by the EqA, legal opinion<sup>7</sup> suggests that these groups are *implicitly* protected in circumstances where they comply with the description above. It is therefore prudent for employers to regard these groups as protected by Equality legislation.



Trans people are protected as employees and as service users in the delivery of goods, facilities, and services. All employers are subject to the EqA. Private sector employers are under less pressure to take pro-active steps to embed equality in their practices and protocols; it is nonetheless good practice, and protects the employer against potential legal action, to use the Public Sector Equality Duty (PSED) as a model. Employers and service providers in the public sector have a general duty to have due regard to the following:

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited under the EqA;
- advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- fostering good relations between people who have different protected characteristics.



**Direct discrimination** occurs when people are treated less well, because they have a protected characteristic, than a person who does not have that characteristic. This applies also when people are discriminated against because they are perceived to be trans – even if they are not. Those associated with trans people, such as partners, spouses, other family members or carers are also protected against discrimination.

*John told his line manager that, after the Christmas break, he would return to work as Jenny. Jenny became aware that her Christmas bonus had not been paid. She thought it was just late, or a mistake. She enquired, and was told that she had performed poorly over recent months. This was not true, and she was able to prove that her performance had been excellent. All the other employees were paid their Christmas bonuses. An employment tribunal found that Jenny's treatment was a direct result of being trans. The company had to pay the bonus and compensation.*

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<sup>7</sup> Claire McCann, Legal Opinion (Women and Equalities Select Committee). 'The protected characteristic of gender reassignment' in s.7 of EqA will apply to any person proposing, undergoing or who has undergone the process (or part of a process) of reassigning his/her sex ...by changing physiological or other attributes of sex. This could include intersex, non-binary, agender or other "transgender" people but... **only** where such persons are seeking (or have sought) to undergo a *process* of reassigning their gender away from their birth gender or are perceived to be doing so.'

**Indirect discrimination** occurs when a rule that is neutral in its application to most people, creates a disadvantage for a person with a protected characteristic. New and old policies and procedures should be considered in light of the needs of trans people, and should be designed or amended to cater for their particular circumstances. It is not enough for an employer to say “we’re treating you in the same way as we would any other employee”, if that treatment puts a trans person at a disadvantage. Where it proves impossible to overcome such a disadvantage, the employer must show that they have a ‘legitimate aim’ and that they have taken ‘proportionate means’ to limit the disadvantage as much as possible.

#### *Case study*

*Maggie was living full-time as a woman following her recent transition. She planned to return to work as a nurse. In the care home where she worked, all nurses wore trousers regardless of their gender status. Maggie felt that, although this policy was not inherently discriminatory as it treated everyone similarly, it had a negative effect on her. Patients and others found it harder to ‘read’ her as a woman, because she still had some male characteristics, and wearing trousers led to mistakes in pronouns; patients and other staff referred to her as ‘he/him’. The manager of the care home decided that although there was a ‘legitimate aim’ in making all staff wear practical uniforms, it was disproportionate to make Maggie comply when she was still able to do her job very well, wearing a skirt. She was therefore permitted to do so.*

**Harassment** means any unwanted behaviour that violates a person’s dignity or creates a hostile environment.

*Chris works in an open-plan office in a large bank. Other people’s conversations are easily heard. Chris heard his colleagues making jokes about ‘trannies’. Chris’s father had recently changed her role, and was now known as Sally. Chris and his family are struggling to come to terms with it. Chris wanted to speak up and say how hurt he felt by the ‘tranny’ comments, but didn’t feel able to. He knew that he would be unable to share this information with his co-workers, and he continued to keep it secret.*

This kind of behaviour would prevent others also from sharing information about their gender identity, or sexual orientation, because these issues, although different, attract the same kind of prejudice. This behaviour creates a hostile environment.

**Victimisation** occurs when someone is treated badly as a direct result of having complained, either themselves, or someone else has complained on their behalf, about discriminatory treatment under the Equality Act.

#### *Case study*

*Following her return to work after transition, Joan started to use the company’s gym facilities including the changing area which had a number of curtained cubicles, so Joan was able to change privately. Other women employees made discriminatory and personal comments between each other, but deliberately within Joan’s hearing. Joan complained to the sports manager, who talked to the women concerned. The manager then told Joan she would have to stop using the gym facilities as it was upsetting the real women. Joan suffered a further detriment following her complaint. This is victimisation under the Equality Act.*

Employers and co-workers must be aware of that they must:

- not discriminate against trans people;
- not harass trans people or create a hostile environment by using transphobic language (whether or not this is in the presence of a trans person);
- not victimise a trans person who has complained about a transphobic incident;
- if a person takes time off for treatment associated with gender reassignment, this must not be used against them, for instance, as a reason for not promoting them;
- maintain the privacy and dignity of trans people;
- ensure that measures are in place to support a person who is undergoing transition.

### **Positive Action (case study)**

*A call-centre advertised for a person to join the team answering incoming phone-calls from people seeking advice. The advertisement stated: 'we welcome people of any race or religion, who may be married, or in same sex marriages or civil partnerships, pregnant, disabled, lesbian, gay, bisexual or transgender.' A large number of people applied but the two people who were equally qualified to carry out the job specifications, were men, one of whom mentioned that he had transitioned 6 months ago. The interviewer chose this man for the job, because even though the two men were equally qualified, trans people were not well represented in the workforce.*

This is 'positive action' which is permitted under the Equality Act. It is not positive discrimination, which would be illegal.

**The Gender Recognition Act, 2004 (GRA)** was enabled in 2005. To qualify for a GRC, trans people must have lived in their 'affirmed' gender (that is according to their identity, rather than the sex assigned at birth) for at least 2 years. This change must be intended to be permanent, in order to obtain a gender recognition certificate (GRC).<sup>8</sup> This means that they have their new gender status, 'for all purposes'; the person automatically qualifies for a birth certificate if the birth was originally registered in the UK. If a person has a GRC, information about the person's gender history is described as 'protected information', so it must not be passed on to anyone without the permission (preferably written) of the person concerned.

Under GRA s22(4) if member of staff discovers, in the course of doing their job – 'in an official capacity' – that a work colleague has a trans history, and the staff member shares

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<sup>8</sup> The Government is discussing the possibility of introducing a simple 'self-determination' process, as many other countries have done, including the Republic of Ireland, in order to access a GRC (2019).



that information with another person, without obtaining the person's consent, this could be a criminal act. So, it is always essential to have the permission of the trans person, before sharing this information with anyone else.<sup>9</sup>

About 5,000 people have Gender Recognition Certificates (GRC).<sup>10</sup> Not having a GRC must not be used to disadvantage a trans person. Asking to see a GRC is not allowed, and may be regarded as harassment. It is best to treat all known trans, non-binary and non-gender people as though they have the protection of a GRC. Birth certificates should also not be requested. Identification can usually be provided by passports or driving licences which may be obtained by producing a doctor's letter.

A GRC is not needed in order to change one's name, pronouns, title, or the way one dresses at work (see name change below).



Those who are already in a heterosexual marriage, a same-sex marriage or civil partnership, cannot obtain a full GRC unless they divorce or annul the marriage, or dissolve the civil partnership. They can then reconstitute any of these official relationships: marriage can be changed to marriage (same-sex couples) or civil partnership. Conversely, marriage (same-sex couples) and civil partnerships involving a person wishing to obtain a GRC, will have to be reconstituted as marriage.

Since none of these changes can be made without the agreement of the non-trans spouse or partner, this is a barrier to those who would otherwise wish to obtain a GRC but are unwilling to put themselves and their partner or spouse through the trauma associated with divorcing, annulling or dissolving their existing legal relationships.

### **General Data Protection Regulations (GDPR); Data Protection Act (DPA) 2018**<sup>11</sup>

The new Data Protection Act came into effect on 25 May 2018. It sits alongside the GDPR, and tailors how the GDPR applies in the UK. The DPA 2018 supports the GDPR rather than enacting it; the two laws should be read together. The GDPR applies to the processing of personal data; all IT records of the individual's personal life and medical history ("sensitive personal data") must be held in line with the GDPR, including password-protection, and should be "kept for no longer than is absolutely necessary". A named person who needs to access this private information, must still ask permission of the individual concerned, unless there is an emergency situation and the individual is unable to give permission. Employers should note that an individual who suffers damage by reason of any contravention by a data controller of any of the requirements of the GDPR is entitled to compensation from the data controller for that damage.<sup>12</sup>

<sup>9</sup> There are a few exceptions to this rule under s22e Equality Act, but these are specific to medical or criminal procedures and are not likely to be applicable in employment situations.

<sup>10</sup> The GRA was enabled in 2005. The date of writing is 2019. The 5,000 figure therefore represents 14 years of applications. The numbers will continue rise slowly unless or until the Government changes the present cumbersome process of accessing a GRC, in which case, numbers may rise more rapidly.

<sup>11</sup> for a comprehensive explanation of GDPR requirements, see <https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation>

<sup>12</sup> <https://bit.ly/2JUHTgy>

**The Human Rights Act 1998 (HRA)** underpins all equality legislation that relates to employers in the public sector, and those for whom they provide services. Article 8, in particular, requires trans, non-binary, non-gender and intersex people to be treated with respect, dignity and fairness, and to protect their privacy in family life and correspondence. Article 3 creates an absolute ban on degrading treatment. Article 14 is also important; it does not stand alone, but it ensures that all the other Articles under the HRA are delivered in a non-discriminatory way.

Employers should publish their Equality and Diversity policies, and make it clear that these policies also apply to those they contract to provide services for them, or on their behalf. The policies must therefore be repeated in procurement policies, so that when another organisation is bidding for contracts they are aware they must also comply with these equality and diversity policies. The gender reassignment characteristic should be specifically referred to, and understood to include all those who express identities that are trans, non-binary and non-gender.



## 2. Preparing for Transition

Trans people are often afraid that their employer will react badly when they disclose their intention to transition. It is recognised that this makes it hard for them to perform as well as they could, so it is important for the employer and for the individual, to have confidence in the transition policy.

The first action is to talk to the individual and find out how they want to handle it. Actions will be agreed before the transition occurs, and plans made together about how to move forward once the transition has happened.



When a person transitions as an adult, sometimes in middle age or later, the years of repression of the person's gender identity is likely to have contributed to a deteriorating mental state. The treatment is therefore life-saving, and is not undertaken lightly; it is not a 'life-style' choice, nor is it a mental illness. Access to treatment is urgent.

Measures must be in place to make the transition at work as smooth as possible. An agreed, personalised 'Memorandum of Understanding' (MoU), should be drawn up, covering a number of possible topics, outlined below. The individual may, of course, suggest topics that are not in the following list. This agreement shows commitment to supporting the employee at all stages, but it can be changed if necessary. Initial agreements do not always work out, so there must be flexibility. Schedules may change especially for those who access NHS treatment, for which waiting lists are long. Early actions may include:

- ensuring that all managers at every level understand the impact of legislation, especially the Equality Act and the impact of this and other legislation on discrimination, harassment, inclusion and confidentiality;
- deciding whether further training will be necessary, who will do the training, and when. A rolling program of training may be set up so that new people coming into the organisation will be familiar with the equality principles. The employer must be alert to the need not to put the spotlight on the person, unless they wish to be actively involved in training. Human Resources Department or LGBTI champion(s) will advise following discussion with the person concerned. (see 3, Celebration and Training);
- considering any difficulties that may arise because the person has working relationships with outside organisations; is it necessary to explain?
- providing public information is not usually necessary but, if it is, then it must be a carefully drafted Press release. No action may be taken without input from the person undergoing transition (see 4, Dealing with the Media).

### 3. Awareness training - Celebrating Diversity

The employer should always have an appointed LGBT+ champion at senior manager level, sometimes in Human Resources (HR) or Occupational Health (OH), who has responsibility for equality and diversity issues, and has oversight of LGBT+ training of the workforce. Third sector, professional trainers, local trans groups, and e-learning modules may also be involved.<sup>13</sup> The role of champion, will always appear on the website, so that a person planning to transition, or experiencing transphobic bullying, has a starting point for obtaining advice and support. Events that celebrate diversity, such as LGBT history month (February) should be funded by the employer and attended by senior management.



### 4. Dealing with the media

The Press Office should be briefed to deal with any intrusive questions from the Press so that they are not taken unawares. In most circumstances it is only necessary for them to indicate that an equality and diversity statement is on the website along with other organisational policies and will be adhered to by the employer. This includes privacy and respect measures.

Our Organisation is proud of its employment policy and its commitment to equality and diversity among its employees. We support all our staff, we treat them with respect and have due regard for their privacy and wellbeing, regardless of age, disability, gender reassignment, marital/or civil partnership status, pregnancy/maternity, race/ethnicity, religion or belief, sex or sexual orientation.

It is not necessary to mention any specific protected characteristic, or to confirm that a trans person is employed by that organisation. Even if the identity of the individual becomes known to the media, the employer must give no details to the press, unless expressly permitted by the individual concerned. Where this does occur, a risk assessment should be undertaken immediately. If the risk assessment indicates that it would be helpful, and the person wishes to do this, the employer may, for instance, provide a job that doesn't involve contact with members of the public, until media interest dies down. It may also be necessary to help the individual move from the present address if door-stepped by the media or otherwise harassed at home. It is the responsibility of the employer to assist in protecting the individual, including complaining to the Press Complaints Authority.

<sup>13</sup> [https://www.gires.org.uk/elearning/0/presentation\\_html5.html](https://www.gires.org.uk/elearning/0/presentation_html5.html)

## 5. The Memorandum of Understanding (MOU)

The MoU is a confidential document. It does not represent a binding and unchangeable arrangement, but rather a commitment to engage with, and support, the employee at all stages. Information must be held in line with GDPR. Hard copies must be kept in double sealed envelopes with the name(s) of the person(s) who are allowed to open them, clearly marked. The document must not be accessible to unauthorised personnel; it should be in a locked drawer or file. Any information held in computer files must be password protected as part of the overall data protection. IT systems must prevent unauthorised staff to come across this document, or any other document that would give away a person's gender history.

The MoU should be reviewed, by agreement, every three or four months, and reassessed at each significant stage of the process, or at any time that the employee requests a review. Discussions will pinpoint any likely problem areas, and steps should be taken to avoid these, rather than deal with them after they have arisen. Action will not be taken without first seeking the consent and insights of the individual.

The initial meetings and the drafting of the document may be undertaken by the line manager, often with a member of Human Resources. The trans member of staff should be offered the support of a colleague and/or union representative at all the meetings where transition is discussed, the memorandum is drawn up, agreed, and subsequently reviewed.



The trans member of staff and the line manager (or other senior member of staff) should sign this document once it is agreed.

All participants in the meetings will keep these discussions in complete confidence.

The following issues may be considered by the individual and the manager, as well as any additional matters that the trans person raises;

- changing the name, personal details and social gender (section 6);
- storing sensitive information (section 7);
- deciding how the individual wishes to inform management, colleagues and associates or would prefer this to be done by someone else who is agreed to be suitable (section 8);
- considering whether there are duties within the role that should not be undertaken at specific times within the process; change of job if requested or required; risk assessments carried out if necessary (section 9);
- scheduling time off for medical treatments if known (section 10);
- checking insurance policies (section 11);

- updating pension information if necessary (section 12);
- agreeing any dress code requirements (section 13);
- agreeing use of toilets and changing facilities (section 14);
- considering, and eliminating, any possible conflict between protected characteristics of 'religion or belief' and 'gender reassignment' (section 15);
- training on receiving incoming telephone calls (section 16), and
- updating Disclosure and Barring Service checks if necessary, following a change of name, a special procedure may be accessed;<sup>14</sup>

## **6. Name and Title change - Privacy and confidentiality**

The employer must be led by the trans person themselves regarding how and when the change of name and other details are to occur. Name change can occur without any legal process, informally, upon request by the trans person. The employer should not insist on people providing more than a simple signed statement, an 'unenrolled Deed Poll', saying that they are changing from the old name and title (and address), to the new ones. This document should be signed by the trans person, and witnessed by a senior manager or other member of staff. Alternatively, or in addition, updated Driving Licences and Passports can be presented; these are easily changed with a doctor's letter, or the doctor's letter itself may be used as evidence of the individual's transition.

However, trans people are often required by banks and other service providers to submit a Statutory Declaration (made before a solicitor or in a Magistrates Court) or an 'enrolled' Deed Poll document (endorsed by a court)<sup>15</sup>, and possibly a doctor's letter prior to changing documentation. They may therefore already have such documentation and can produce any one of these as evidence of the intention to keep the new name and gender marker permanently. If, for whatever reason, the employer requires any of these official documents which the individual has not already obtained, the employer should cover the cost.

The trans person's records will be immediately updated so that they only show their current name and title. As mentioned with regard to the MoU, all changes to the individual's records are to be managed under the GDPR 2018.

The employer should follow the lead of HMRC, DWP and the passport office, as well as some banks and universities, by updating data systems to allow people to use the gender neutral title, Mx, to accommodate those individuals who identify as non-binary.

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<sup>14</sup> [sensitive@dbs.gov.uk](mailto:sensitive@dbs.gov.uk).

<sup>15</sup> <https://www.gov.uk/change-name-deed-poll/enrol-a-deed-poll-with-the-courts>



Extra caution is needed when, for example, security checks and medical screening are undertaken. Any information arising from these checks that could reveal a person's trans history must be restricted to the staff whose specific duties are involved, and who must understand the need for complete confidentiality.



A person who deliberately breaches another person's privacy, would be subject to the organisation's disciplinary procedure, and could lose their job.

## 7. Storage of protected information

Hard copies of any old documents that cannot be altered, or replaced, must be kept in sealed envelopes, marked strictly confidential, and kept in locked storage separately from the files of other employees, rather than in a filing cabinet. The name(s) of those who are allowed to open these envelopes must be clearly written on the outer one. All IT records of the individual's personal life and medical history must be secured in line with the GDPR, including password-protection. Any named person who needs to access this private information, must still ask permission of the individual concerned, unless there is an emergency situation and the individual is unable to give permission. The aim of these precautions is to prevent a member of staff accidentally coming across this sensitive information in the office.



Trans people may choose to disclose that they have changed their gender status in some circumstances, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed.

Breaches of confidentiality will be treated in the same manner as disclosure of the highly personal details of any other employee protected under the GDPR. This information is 'sensitive', and should be 'kept for no longer than is absolutely necessary'. In the case of a person having a GRC, a staff member learning about this protected information as part of their job – therefore, in an 'official capacity' – could be committing a criminal offence if they shared this information with anyone else, unless this was authorised by the trans individual concerned.

## **8. Informing colleagues**

The manager and the individual should work out together how best to inform work colleagues about the trans person's plan to transition. Trans people are not obliged to inform their employer about their trans history as a condition of employment or promotion. So, if a person transitioned before joining a company or organisation, no information about this should be passed on to others unless absolutely necessary, and then only with the permission of the person concerned. Many trans people wish to keep their trans background private, while others are willing to discuss it openly.

This information cannot be kept secret once a person transitions in the workplace, so careful planning must be done in the run-up to that happening. It may not be necessary to inform the entire workforce. A case by case decision on the extent of the disclosure of this information should be agreed by the person concerned and the employer. External clients or agencies that the trans individual is currently working with, may also need to be informed. So, levels of disclosure may vary depending on the size of the company and the extent to which the individual who is planning to transition has face to face contact with co-workers, and indirect contact with clients.

The wishes of the individual are most important, although management and the HR department have the responsibility to see that the process of informing others is safe and respectful. In some circumstances the trans person may wish to disclose these matters personally to some or all of their contacts. If this is the case the employer will need to know when this is going to happen, and what kind of information will be given to work colleagues, so that support is available to the members of staff involved.

It must also be recognised that non-binary, non-gender and gender fluid people will also make changes that must be accommodated by the employer. In every case, the changes, and any need to impart these to others in the workforce, must be dealt with according to the individual's wishes.

The following example involves a trans woman, but exactly the same approach could be used for a trans man, with the pronouns and names reversed or adapted for a non-binary or non-gender person.

### **From David to Claire**

Level one: a trans woman has a private interview with the CEO, senior manager or line manager;

Level two: the CEO (or other manager) calls a meeting of those colleagues who work closely with the trans person, and explains the situation and provides basic information; the trans woman joins the group for lunch and makes it clear that she is happy to talk about it and welcomes any questions;

Level three: an e-mail written by the trans person is sent out to all other employees in the same building, perhaps along the following lines.



E-mail to colleagues:

N.b Please note that although Claire suggests, in her email below, that people should ask her questions, some questions are unacceptable and impolite, for instance, you should not ask people intrusive questions about surgery, or other treatment. It is always best that trans people themselves lead any conversations about issues specific to their transition or current situation.

Dear Colleagues,

I am writing to you because I know that it wouldn't be possible to speak to you all individually. I wanted to tell you my news personally, rather than leaving you to hear it via someone else. There are going to be some big changes in my life that I would like to share with you.

I have been seeing a specialist doctor for a while, who confirms what I have recognised for many years. I identify as a woman, and I always have. Because I don't look like a woman, I have lived with a feeling of great discomfort, which I have tried to ignore, repress or overcome. This uncomfortable experience is called gender dysphoria. Most of you will have heard of people in my situation being described as transgender, or just trans.

I have reached the point where I cannot continue in my old gender role. I shall be away for three weeks and will return in September. From then on I will be living and working as a woman. I am still the same person, and I shall continue to do the same job. In that respect nothing will change. My appearance and the way I dress will change, of course, and I will no longer be known as David, but as Claire. Pronouns are tricky, but I am sure I can count on you all to refer to me as 'she'.

We have great values in our organisation; we celebrate diversity and we treat each other as equals, so I am confident that all of you will give me the support that I need through this rather difficult phase of my life.

Please feel free to come and ask me about anything that you don't understand, or would like to know. I don't mind answering questions, and if you have uncertainties, I would much rather you spoke to me directly about them.

Regards  
D/Claire

## 9. The Role of Occupational Health

A person experiencing gender dysphoria (the discomfort associated with gender incongruence) should be offered the opportunity to be referred to Occupational Health (OH) for advice. The role of OH will be to advise the employer on fitness for work issues as well as provide appropriate advice on any medical issues which may impact on an individual's ability to carry out the full scope of the job.

Generally, trans people are not more at risk than their work colleagues, however, OH should undertake ongoing Risk Assessments for trans employees, where the job is physically demanding. Assessments should take account of possible risk factors that are unique to these individuals, for instance, trans women lose upper body strength when having hormone treatment; trans men, before having breast surgery, wear breast binders which restrict their movement and may cause back problems.

Following any surgery, advice may also be needed about any temporary adjustments to help those returning to work, who may not, at first, be able to undertake all aspects of their former role. Trans men may have chest reconstruction surgery before, or around the time of, role change. A complication for trans women is that facial hair removal is a very long process, and on each occasion (depending on the method used) they may be required to have two days' beard growth.

Trans people hardly ever wish to change their job within an organisation, but if they request this, and/or Occupational Health advises it, either as a temporary measure, or on a more permanent basis, the employer should help them to do this.

Occupational Health cannot seek to replace the specialist medical advice, assessment and support required by individuals who are considering gender reassignment. However OH staff are able to offer confidential support and counselling for those who are suffering emotionally at what can be a distressing period of their lives. Any individual referred to OH can expect the issues to be dealt with in the strictest of confidence.



## 10. Occupational Requirements

A few employment situations involve an Occupational Requirement (OR) (the work to be performed only by a person of one specific sex). Where this arises, an agreed temporary move to another job may be advised when a person transitions. However, trans people must not lose their jobs because of this, and they may even be recruited where other team members are able to do the particular task where the OR applies. Trans people with GRCs must be regarded as being of the post-transition gender status for the purposes of ORs, but others may be just as suitable who do not have GRCs.<sup>16,17</sup> Common sense should prevail. Where 'Disclosure and Barring' information is required the details for accessing the relevant office can be found under Useful Links (p23) below.

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<sup>16</sup> Schedule 3 of the Equality Act permits steps to be taken in situations where vulnerable individuals are accommodated, for instance, in a Women's Refuge, where a trans woman may also be present. However, any discriminatory action taken to ensure that there is no discomfort to other service-users must be 'proportionate to a legitimate aim', that is, 'objectively justified'.

<sup>17</sup> <https://gendergp.co.uk/wp-content/uploads/2016/03/House-of-Commons-Women-and-Equalities-Committee-Transgender-Equality-1.pdf> (pp30-31)

## **10. Time off for medical treatment**

Those taking time off for treatments associated with gender reassignment are specifically protected under the Equality Act 2010, so that absences cannot be used against them when, for instance, considering promotion. Trans people may need to have time off that is not in line with the employer's policy for other employees.

It is good practice to discuss as far as possible in advance the time away from work that an individual will need. The MoU can only be a general guide initially. Timescales may change over time, and be unpredictable. Consultations and hospital appointments may require full days away from work in addition to any time required for surgical procedures. Flexibility should be allowed for individuals to undergo treatment, especially for those being treated in the NHS, where waiting times are very long. The employer should consider introducing health insurance schemes for gender specific treatments, because during these waiting times, trans people who are, meanwhile, untreated, will not be able to perform as well as they otherwise could.

It is not necessary for people to have time off work in connection with hormone therapy. Chest surgeries will generally require shorter recovery times, than genital surgeries, but all of these will vary depending on the person, and the actual surgery carried out. These are not all the same, so the trans person should obtain an estimated time, from the surgical team. Genital surgeries are not usually scheduled until the person has been living according to their affirmed gender for two years.

## **11. Insurance Matters**

In the past, it was necessary to inform Insurance underwriters about an employee's trans status or past history in case lack of such foreknowledge invalidated the insurance policy in respect of that individual.

However, this changed following the European Court of Justice's (ECJ) decision in *Test-Achats v Council of Ministers* in 2011. The Government is not aware of any employer insurance policies that specifically differ for individuals with the gender reassignment protected characteristic.



It might be prudent however to discuss this aspect of the underwriter's policy with them, to ensure that the ECJ decision is understood and its implications are implemented.

## **12. Pensions**

Everyone born after November 1953 now receives a State Pension at 65. The retirement age for state pension purposes will gradually be increased from 65 to 66 then 67 over the coming decades.

For State Pension purposes, a person with a GRC and new Birth Certificate, is treated as if they had been registered at birth according to their affirmed (post transition) gender. Up to now, trans women without a GRC were unable to benefit from the State Pension scheme that allowed cisgender (non-trans) women to access a State Pension earlier than men, because the trans women were treated as men.

However, recent European Court of Justice (ECJ) case law, found that a trans woman who has had gender reassignment surgery must be treated as a woman for State Pension purposes from the date of surgery, even if *not* in possession of a GRC. Such women (those having had surgery) if born before November 1953 qualified for a pension at the earlier female retirement age.

In view of the ECJ ruling, back-payment by the UK Department of Work and Pensions has now been provided in some cases where post-surgery trans women, without GRCs, are now eligible for the earlier access to State Pensions. It is likely that the DWP will continue to act in accordance with the ECJ ruling, and that the Supreme Court will endorse this. This means that a trans woman, who has had the required surgery, qualifies for a State Pension from the age of 60 without a Gender Recognition Certificate, if she reached that age before 4 April 2005 when the Gender Recognition Act came into force. The current equalisation of the age differences between men and women will eliminate this difficulty in the future.

### 13. Dress code



It is good practice to allow enough flexibility in the dress code to accommodate the process of transition from one gender appearance to another. For example, when starting to live full-time as a woman, flexibility should be allowed over hair length and style, jewellery and make up in line with other women. Where a uniform requires trousers to be worn by both men and women, trans women may prefer to wear a skirt so that others are clear about her gender status as in the Case Study under Indirect Discrimination (page 6).

Where necessary, a new uniform should be fitted and ready well in advance of the change of gender role.

Flexibility must be extended to those who live androgynously, that is, they have a neutral gender expression in terms of dress and would not be comfortable in a strictly feminine or masculine mode of dress. It is possible to accommodate a person who presents sometimes in one role, and sometimes in another and where, for instance, uniforms are worn, these may need to be provided for both genders in order to meet the gender specific dress code at all times.

If the individual wishes to be temporarily redeployed during the initial stage of transition, this may be facilitated, but must never be imposed by the management.

Gender presentation may also be mixed, and still be accommodated by the employer, as the following case shows.

## Case Study

Alex started living as a woman in 2010, following the introduction of the Equality Act (2010) because she felt that she was more likely to be protected by this Act than previous legislation. Alex did not want to have medical treatment, so she made her transition through a steady process of gender redefining.

Her gender expression is non-binary or genderqueer. Such approaches are becoming increasingly visible in a new generation of trans people.



GrrlAlex identifies as a trans woman, and uses female pronouns.

*In 2013, Alex demonstrated, in an Employment Tribunal against a company who were threatening to withdraw work from her business, that the law afforded protection to "a person who is proposing to undergo, is undergoing, or having undergone, a process (or part of a process)...by changing physiological or other attributes of sex". Importantly, Alex was able to demonstrate that her quality of work continued to be of a high standard throughout the process of her transition, and could thereby prove that concerns the company had about prejudice of service-users based on a person's appearance, were unwarranted.*

## 14. Use of single-sex facilities

Toilets and changing rooms should be accessed according to the full-time presentation of the employee in their affirmed gender. The question about whether or not a person has a GRC is irrelevant and must never be asked. It is not appropriate to insist that a person who has transitioned, use only the accessible toilets provided for disabled people, or unisex toilets, unless these are the only facilities available, or they are preferred by the trans person. Unisex toilets are increasingly being introduced in the workplace. This may be especially important for some trans individuals, for instance, those who are non-binary or non-gender, who do not identify either as men or as women, and may be uncomfortable entering facilities designated solely for one or other group.

However, those who do not wish to share the men's or women's single sex facilities with a trans person, then it is they, not the trans person, who must use alternative facilities. All facilities should include cubicles, designed for maximum privacy by having partitions and doors that extend from floor to ceiling.

Also, all other users of all facilities should have awareness training, and be properly prepared to welcome any trans person who is starting to use the appropriate facilities.

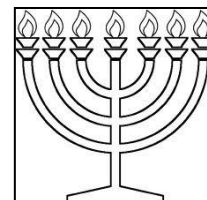




## 15. Religion or belief

Sometimes, people who have particular religious beliefs, or cultural views about gender presentation, claim that their 'protected characteristic' of 'religion or belief' under the Equality Act allows them to refuse to work with, or share facilities with, a person who is trans. Employers, union representatives and other work colleagues do not always know how to respond to these apparently conflicting rights and protections.

There is no hierarchy among protected characteristics; they are listed in alphabetical order to demonstrate that one protected characteristic is not more important than another.



A person's religion or belief must, of course, be respected, but it must *not* be used to discriminate against another person because of that person's protected characteristic. Anyone making such an objection may not understand that although they have a right to their views (no matter how objectionable these may be to others), they do not have the right to act on those views if this results in discrimination against another person. It is not acceptable to move either the trans person, or the person making the complaint, to another work area, so that they do not have to work together. Further training should be offered but, ultimately, a person refusing to work alongside a trans person will have to undergo the employer's disciplinary procedure which may lead to dismissal.



## 16. Incoming calls

The utmost discretion is needed when dealing with telephone calls. Staff working in offices where members of the public may make incoming calls, should be specially trained to be alert to voices that do not match names and titles. Trans women may find it especially difficult when using the phone, to have their gender recognised. Those taking incoming calls may jump to conclusions about the person, and say 'sir', which will be very upsetting.

Operators should listen carefully to the name, and if that doesn't give sufficient clue, or if a mistake has been made, then it is best to apologise, ask politely, 'how do you like to be addressed'. Make a note immediately of the name and matching pronouns and title, so that any ongoing conversation, and future correspondence will not give offence.



Staff may be trained to avoid 'sir' or 'madam'. 'Good afternoon, how may I help you?' may be sufficiently polite, without making assumptions based on the voice.

## 17. Monitoring

If direct monitoring is to be undertaken on the numbers of trans people employed, it is important that the questions are framed in such a way that they do not conflate or confuse 'sex' (male and female), with 'gender identity' (man, woman, non-binary, non-gender, gender fluid and so on). It is also important to understand that for many people who undergo transition, the descriptions 'trans' or 'transgender' do not define or relate to their 'identity'.

Questionnaires should always be prefaced with an explanation about the purpose for collecting these data, for instance to ensure that:

1. appropriate confidentiality measures are in place;
2. positive action may be taken when appropriate, and
3. adequate facilities are provided which are suitable for gender diverse people.

Questionnaires should also state how anonymity will be protected:

1. by recording and storing these data according to the rigorous requirements of the GDPR 2018, and
2. by strictly limiting access to the raw material to a very small number of designated people who will be bound by the GDPR.

Examples of questions:

Is your gender identity the same as that assumed at birth?

No [enter gender identity .....]

Yes

Prefer not to say

The question used by the Solicitors Regulatory Authority in its 2017 survey of the 180,000 people in the profession was:

Do you consider your gender identity to be different from that associated with your sex, as registered at birth?

Yes

No

Prefer not to say

2% of respondents answered "yes", indicating that these respondents are gender diverse.

## Useful Links

Applying for a Gender Recognition Certificate:

<https://www.gov.uk/apply-gender-recognition-certificate>

Disclosure and Barring Service

<https://www.gov.uk/dbs-update-service>

The specific office contact details for trans people are:

Telephone: 0151 676 1452

Email: [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk)

Sensitive Applications Team

Customer services

PO Box 165

Liverpool

L69 3JD

Enclosures should be double-enveloped and marked "Private and confidential."

UNISON guide, "Transgender Workers' Rights".

Carola Towle

UNISON Centre

130 Euston Road

London, NW1 2AY

[out@unison.co.uk](mailto:out@unison.co.uk)

<https://www.unison.org.uk/about/what-we-do/fairness-equality/lgbt/>

<https://www.unison.org.uk/content/uploads/2017/06/Transgender-workers-rights.docx>

Assessment and treatment of gender dysphoria in adults

<https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/college-reports/college-report-cr181.pdf>

<https://www.tranzwiki.net/> to access support in geographical areas

Gender Identity Research and Education Society website:

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



## Terminology 2019

### 1. Introduction

The World Professional Association for Transgender Health states that “the expression of gender characteristics that are not stereotypically associated with one’s assigned sex at birth is a common and culturally diverse human phenomenon that should not be judged as inherently pathological or negative”.<sup>18</sup> Therefore, the terms described below, including the all-embracing descriptions: **gender diversity/ gender variance/ gender non-conformity**, do not indicate mental illness. The World Health Organisation (WHO) has endorsed this view by reclassifying **gender incongruence**, in the International Classification of Diseases, in line with ‘current scientific evidence’, so that it may no longer be regarded as psychopathological.

Terminology in the transgender field is varied and constantly shifting as understanding and awareness grows. All the terms described below may change in their usage and become outdated. In addition, it is important to understand that ‘labels’, although essential to enable discussions about the following topics, are not always welcomed by those to whom they are applied. They should be used only when strictly necessary to clarify a point. They should not be used to describe individuals who do not accept such labels with regard to themselves. This applies both to those outside the transgender community, as well as those within it.

### 2. Gender Identity

Gender Identity, describes the psychological identification of oneself, typically, that is, in the majority of the population, as a **boy/man** or as a **girl/woman**, known as the ‘**binary model**’. There is a presumption that this sense of identity will be consistent with the, respectively, male or female sex appearance of the infant at birth. Where sex appearance and gender identity are congruent, as they are in the majority of the population, the terms **cisgender** or **cis** apply. However, some people experience a gender identity that is somewhat, or completely, incongruent with their sex appearance. Historically, there has been greater recognition of those who, having been **assigned male, identify as women (a trans woman or trans feminine person)**; or, having been **assigned female, identify as men (a trans man or trans masculine person)**. Many in this situation will simply identify as, and be regarded as, men and women.

However, many more do not experience these binary gender identities, but regard themselves as gender neutral, or as embracing aspects of both man and woman and, therefore, falling on a spectrum between the two, or outside the spectrum. People who do not fit into the binary tick-boxes, may describe themselves as **non-binary**, or use more specific terms, such as **pan-gender** (covering all genders), **poly-gender** (having more than one identity), **third gender** (a gender that is neither man nor woman), **neutrois**, (neutral gender), **bi-gender** (a mix of both genders: woman and man), **gender fluid** (fluctuating), or **gender queer**. The ‘**queer**’ word has an unfortunate history associated with attacks on

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<sup>18</sup> World Professional Association for Transgender Health (2011)  
<https://www.wpath.org/>

gay men, but is now re-adopted as a catch-all description of anyone who is not stereotypically straight (heterosexual) and/or cisgender.

A **non-gender** (sometimes **agender**) individual identifies simply as a 'person' who is outside the gender spectrum altogether. These labels must be chosen by the individuals concerned, not imposed by others.

### 3. Transgender or trans

'**Transgender**', now frequently shortened to '**trans**' may be used, currently, to embrace the numerous identities referred to above, which fall outside the stereotypical cisgender cultural norms. Transgender and trans may be used for those who change their gender presentation permanently, as well as others who, for example, **cross-dress** intermittently for a variety of reasons including erotic factors (previously referred to as **transvestism**). There is an acknowledgement that although there are wide differences between many trans people, there is also overlap between groups. For instance, someone who cross-dresses intermittently for some years, may later **transition** (see below) to the opposite gender expression. Non-binary and non-gender identities also fall under this umbrella term. It is acceptable to refer to the '**trans community**'.

### 4. Pronouns, names and titles

Those who change their gender expression from man to woman or vice versa, will change their pronouns from 'he/him' to 'she/her' and vice versa. But non-binary people usually choose more neutral pronouns such as: 'they', 'zie', and others; non-gender people may use the pronoun 'per' (from 'person'). Titles Mx or Pr may be preferred to Mr, Mrs, Miss or Ms. Using the name that a person was given at birth, after they have **transitioned** (para 9) is unacceptable, and may be referred to as '**dead-naming**'.

### 5. Sex

Sex refers to the biological **male/female** physical development. In an infant, the sex is usually judged entirely on the genital appearance at birth, but internal reproductive organs, skeletal characteristics, musculature, and the brain, are all sex differentiated – not necessarily consistently. Other factors such as karyotype (chromosomal configuration) typically XX=female; XY=male, but including others such as XXY, XYY, X0, XXXY and more, are seldom tested unless a genital anomaly is present. There is a presumption that an apparently female infant will identify as a girl, and vice versa.

### 6. Gender role and expression

The gender role is the social role – the interaction with others which both gives expression to the inner gender identity and reinforces it. Despite the greater gender equality in modern Western culture, for instance, in terms of the subjects studied in school and at university; the choice of friends; work and domestic arrangements; dress and leisure pursuits, there is still a presumption of conformity with society's 'rules' about what is appropriate for men and women, boys and girls, especially in terms of appearance. In terms of dress, hairstyle and general appearance, a significant departure from stereotypical gender expression often causes anxiety and discomfort in those who witness it. Their own discomfort may be

reflected back on gender diverse individuals, causing a continuous source of stress in social situations. **'Living in role'**, that is, in line with the person's identity rather than their assigned sex, is still required in order to access surgery. This can be particularly challenging for those who identify as non-binary or non-gender, and whose gender expression does not necessarily fit either the typical 'man' or 'woman' classification.

## 7. Gender incongruence/gender dysphoria

The mismatch between the assigned sex, and the gender identity may be described as **gender incongruence**. This term has replaced 'transsexualism' (paragraph 15). The discomfort associated with this incongruence is described as **gender dysphoria**. This arises at two levels: social interactions feel inappropriate, and sometimes the sex characteristics feel alien, since these contradict the inner sense of gender identity.

It is now understood that gender identity, although powerfully influenced by the sex of the genitalia and the gender of rearing, is not determined by these factors. There is scientific evidence that the brain is a mosaic of male and female development. Typically, the brain is predominantly *consistent* with the sex of the genitalia, however, sometimes the brain is predominantly *inconsistent* with other sex characteristics, so that a person is predisposed to experience a gender identity that is in contradiction to their sex as registered at birth. This atypical brain development has been demonstrated to override sex appearance and gender of rearing.<sup>19</sup> Gender dysphoria can only be overcome by making social and sometimes physical changes, to align these with the gender identity, rather than the sex assigned at birth.<sup>20</sup>

## 8. Transition

**Transition** is the term used to describe the permanent full-time adaptation of the gender expression in all spheres of life: in the family, at work, in leisure pursuits and in society generally. A few people make this change overnight, but many do so gradually over a period of time, changing their presentation intermittently, and sometimes while undergoing early medical interventions such as hormone therapy to alter their appearance. **Transition does not indicate a change of gender identity**. The person still has the same identity post transition; the changes are to their public gender expression. Transition may be supported by changing physical sex characteristics through the use of hormone therapy, and sometimes surgery, to bring these in line with the identity, but such changes vary between individuals and are not inevitable. Across all trans identities, the process of change may or may not be supported by medical intervention. Both binary and non-binary identifications can lead to a variety of public gender expressions from a neutral **androgynous** appearance, to very masculine or feminine expressions. Both binary and non-binary trans people may change their names, pronouns, titles, and appearance.

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<sup>19</sup> Reed T, Diamond M. Biological correlations in the development of gender dysphoria, The Lancet June (2016)

<sup>20</sup> Good Practice Guidelines for the assessment and treatment of gender dysphoria in adults

## 9. Affirmed Gender

The process of bringing the gender role and appearance into alignment with the gender identity, 'affirms' that identity. Thus the term '**affirmed**' gender, is now becoming more common in describing the post-transition gender status. 'Affirmed' should be used in preference to 'acquired'; the latter is the language of the **Gender Recognition Act**, and is more appropriately used to describe the acquisition of a **Gender Recognition Certificate** and new Birth Certificate (paragraph 14).

## 10. Gender affirming treatment

Those undergoing transition permanently, usually have gender affirming treatment that includes hormone therapy and often surgery to bring the secondary sex characteristics: breasts and genitalia, more in line with the gender identity for both trans men and trans women, as well as non-binary and non-gender individuals. Such surgery is sometimes referred to as **gender (or sex) reassignment** surgery. The term '**sex change**' is not considered appropriate or polite. Trans women, and occasionally trans men, may have Speech and Language therapy; trans women who have lived through a male puberty will require facial hair removal treatments. Surgeries such as facial feminising and body contouring may be chosen, but these surgeries are usually not provided on the NHS.

## 11. Intersex conditions

There are a number of intersex conditions (now often known as **Differences of Sex Development, DSD**). In a minority of these, the appearance at birth is atypical, being neither clearly male nor female.<sup>21</sup> For many years, babies in this situation had surgery neonatally to create, usually, a female appearance. Accordingly, the sex (surgically determined), and the anticipated gender identity (girl) assumed at that time, were not always consistent with the children's gender identities as they grew up. This resulted in a need to transition to live as boys and men, at a later stage. It also demonstrated that the sex appearance, and the gender of rearing are not the critical factors in determining gender identity. In addition, this surgery could lead to a poor outcome, e.g. loss of erotic sensation. Surgical intervention before the individual is able to give informed consent is now regarded as unethical and is considered unlawful in some jurisdictions.

As noted in section 5 above, other inconsistencies in development may be associated with atypical sex chromosomes such as Klinefelter syndrome (XXY), Jacob's syndrome (XYY), or atypical combinations of 'X' and 'Y', such as XXYYY, XYYY and so on, including mosaicism (more than one chromosomal configuration/karyotype in the same individual). Intersex conditions are often associated with unusual pre-natal hormone levels. Other conditions such as Cloacal Extrophy may be included in this group since babies with this condition may have poor genital development (external bladder) which needs urgent correction; this has led to male (XY) babies being surgically assigned as female and raised as girls following the same flawed reasoning as for DSD infants. This strategy failed more often than it succeeded since the majority identified as boys.

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<sup>21</sup> Genetic anomalies that are particularly associated with unusual genital appearance are: Androgen Insensitivity Syndrome, Congenital Adrenal Hyperplasia, 5 $\alpha$  reductase or 17 $\beta$  Hydroxysteroid Dehydrogenase (HSD) deficiencies.

## 12. Sexual orientation

Sexual orientation is a separate issue from gender identity. Sexual orientation is the romantic attraction between one person and another. This is different from the internal knowledge of one's own identity. Trans people may be gay, straight, bisexual or, occasionally, asexual, but these terms do not always apply comfortably to trans situations. There is no specific vocabulary, for instance, in the case of couples who remain together when one of them transitions. This cannot be categorised by any existing terminology, since the sexual orientation of the non-trans partner does not change; the sexual orientation of the trans partner may or may not shift. Trans people may make lasting relationships with other trans and non-binary people, so the possibilities are many and varied, and do not necessarily fit into typical categorisations. Sometimes, for clarity, in clinical environments, the terms: **androphylic** (attracted to men); and **gynaephylic** (attracted to women) may be used.

## 13. Acronyms

The most common acronym **LGBT** (lesbian, gay, bisexual and trans) brings together these groups. Historically, the groups were not always comfortable to be linked in this way, because gender identity (who you are) and **sexual orientation** (whom you are romantically attracted to) are different issues. However, together, these groups are better able to fight **transphobia, biphobia** and **homophobia**, the irrational hatred which often gives rise to minority stress, discrimination, exclusion, hostility and sometimes violence.

Recently, the acronyms have lengthened to include **Q**, for 'queer' or questioning; **I** for intersex (DSD), and/or the plus sign '+' to symbolise the inclusion of any, and all, kinds of trans, non-binary and non-gender presentations and sexual orientations. The acronym looks like this: **LGBTQI+**, and may grow further. Sometimes an acronym is a clumsy tool for explaining sensitive issues. Some familiar acronyms are distinctly binary and therefore potentially inaccurate and impolite, e.g.

- **AFAB**, assigned female at birth;
- **AMAB**, assigned male at birth;
- **MtF**, male to female, and
- **FtM**, female to male.

## 14. Gender Recognition Act (2004)

The Gender Recognition Act (GRA) became effective in 2005. Currently (2019) the Gender Recognition Certificate (GRC) can be obtained by those who can demonstrate that they have lived for at least two years in their affirmed gender, and that they have a diagnosis of 'gender dysphoria'. Those whose births were registered in the UK qualify for a new birth certificate. Those who are in a pre-existing marriage, same-sex marriage or civil partnership, are obliged to change these legal relationships, with the consent of the spouse, either from an assumed heterosexual relationship (marriage) to a same-sex marriage or civil partnership, or from a civil partnership/same-sex marriage to a marriage. Discussions are ongoing as to whether the UK will allow statutory 'self-determination' as sufficient for

obtaining a GRC. This approach has already been adopted in several other countries, including the Republic of Ireland, without any adverse consequences.

Breaching the confidentiality of trans people without their consent is always unlawful, but if they have a GRC and the information is passed on by a person who has learned this information in an 'official capacity', that is, as part of their job, this could be a criminal offence. The possession of a GRC does not *automatically* enable a trans person to be accommodated according to their affirmed gender in certain environments, such as secure accommodation, prisons, and refuges.

## 15. Equality Act (2010)

The Equality Act defines the protected characteristic of 'gender reassignment'. The legislation was written with the intention of covering only trans binary individuals, described in the Act as transsexual people, on the basis that they '*propose to undergo, are undergoing or have undergone a process or a part of a process*' to reassign their gender away from the sex assigned at birth. However, in the opinion of an expert<sup>22</sup> in this legislation, the wording above *could* be understood to apply more widely to those who are **non-binary** or **non-gender** people, as well as those with intersex conditions. No case law exists, so far, to confirm this opinion and establish a precedent, but it would be prudent for employers and service providers to take account of it. Those having the characteristic of gender reassignment, or who are perceived to have the characteristic, as well as those associated with them, such as family members, are protected against discrimination, harassment and victimisation. Public bodies have a duty to facilitate good relations between groups and provide equality of opportunity.

Transfer from one prison estate to another for a person who has transitioned, can be permitted, but much depends on the offences committed by the trans person and the risk they pose to other inmates. The trans prisoner's own safety must also be considered. Schedule 3 under the Equality Act allows organisations caring for vulnerable people, to discriminate against trans people, with or without a GRC, but the steps taken must be proportionate to a 'legitimate aim', so that in single sex spaces, there is no unreasonable discomfort caused to those occupying them.

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<sup>22</sup> Claire McCann's Legal opinion to the Women and Equalities Select Committee. 'The protected characteristic of "gender reassignment" in s.7 of EqA will apply to any person proposing, undergoing or who has undergone the process (or part of a process) of reassigning his/her sex from his/her sex at birth by changing physiological or other attributes of sex<sup>2</sup>. This could include intersex, non-binary, a-gender or other "transgender" people but, in my view, **only** where such persons are seeking (or have sought) to undergo a *process* of reassigning their gender away from their birth gender or are perceived to be doing so.'