

## **Gender Diversity Guidance Document (Gender reassignment)**

<b>Relevant to:</b>	All LJMU Staff and Students
<b>Responsibility for Document Review:</b>	LJMU Equality, Diversity and Inclusion Manager
<b>Date introduced:</b>	April 2012
<b>Date(s) modified:</b>	September 2014, September 2016, March 2017, May 2018, June 2018, March 2019, May 2020
<b>Next Review Date:</b>	May 2022

### **RELEVANT DOCUMENTS**

LJMU Equality and Diversity Policy

LJMU Equality and Diversity Objectives and Action Plan (2016 – 2020; 2020-2024)

LJMU Dignity at Work Policy

LJMU Disciplinary Policy

LJMU Grievance Policy

### **RELATED POLICIES & DOCUMENTS**

- Equality Act 2010
- Marriage (Same Sex Couples) Act 2013
- Civil Partnership Act 2004
- Education Reform Act 1988
- The Equal Treatment Directive (2004/113/EC) 74
- The Gender Recognition Act 2004
- The Gender Recognition Bill 2008
- Protection from Harassment Act 1997
- Public Order Act 1986
- Sex Discrimination (Gender Reassignment) Regulations 1999

## 1. The University's Commitment

The University is committed to supporting trans people in its community, including those who are non-binary and non-gender (see Terminology Appendix 1). We recognise that people work better, and study better, if they can be themselves in the workplace and in education. Welcoming all trans people, whether they are members of staff, students, visitors, contractors or clients, will help to create an ethos of inclusion and equality within the diverse community of the University. With regard to trans people, the University recognises 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>1</sup>**

## 2. Legal obligations and Good Practice

The University publishes its Equality and Diversity policies, and ensures that these policies also apply to those under contract to provide services to us, or on our behalf. All staff and students have ready access to these policies.

### 2.1 The Equality Act 2010 (EqAct):

The University undertakes to fulfil its obligation under the EqAct with regard to those who have the protected characteristic of 'gender reassignment'. In order to qualify for this protection in law a person must have proposed to undergo, be undergoing or have undergone a process (or part of a process) to move away from their birth assigned sex as male or female, towards their affirmed gender as women or men respectively – a process known as 'transition'. Others who have made some gender affirming changes but who do not identify as binary men or women, will include non-binary and non-gender identified people, as well as those who are intersex. These groups are only 'implicitly' protected by the EqAct, but there is, nonetheless, a strong legal argument for their inclusion.<sup>2</sup> Therefore as a matter of prudence, and in the interests of fairness and inclusion, the University will regard all the above groups, under the umbrella term 'trans', as protected by the EqAct. In no cases, are medical interventions required or relevant. In addition the EqAct extends protection to those who are wrongly perceived to be trans. Others may be protected by association with a trans person, such as partners, spouses, family members or carers.

The University will ensure that trans people are protected from unlawful discrimination (direct or indirect), harassment and victimisation in accordance with the Public Sector

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<sup>1</sup> World Professional Association of Transgender Health (2011) and Good Practice Guidelines for the assessment and treatment of gender dysphoria in adults <http://www.rcpsych.ac.uk>

<sup>2</sup> Claire McCann: Evidence to the Women and Equalities Select Committee. Nov 10 2015. 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.

Equality Duty PSED) under the EqA. The University will promote equality of opportunity, and foster good relations between trans people and other groups.

*[The case studies used in this document are illustrations of how the law and good practice may be put into effect. They are not necessarily real events, and are not examples of John Moore's University's practice.]*

## **2.2 Direct discrimination**

Direct Discrimination occurs when a person is treated less well, because they have a protected characteristic (or are perceived to have that characteristic or are associated with a person who has the characteristic), compared with a person who does not have that characteristic.

### *Case Study Example 1*

*Sally is a University lecturer. She transitioned to live as a woman during the summer vacation. On her return to work, one of the other tutors in her faculty objected to trans people on religious grounds and asked that Sally be transferred.*

*This would be direct discrimination. 'Religion or belief' combine to form a protected characteristic under the Equality Act. Personal religious views or beliefs must be respected, however, these may **not** be used to discriminate against others. The lecturer was told that, if he intended continuing to work at the University, he must agree to work alongside Sally. Note that the protected characteristics under the Equality Act are in alphabetical order, to indicate that they are all of equal standing; one cannot take precedence over another.*

## **2.3 Indirect discrimination**

Indirect discrimination occurs where a rule or policy is neutral in its application to the majority of people, but has negative consequences for a protected person or group.

### *Case Study Example 2*

*Sid approached the manager in the Human Resources Office three weeks into the start of their second year at Uni, to explain that they had been struggling for a couple of years with their identity. They were actually non-binary and wanted to change their registered name from Mary to Sid, and their pronouns, from 'she', 'her' to 'they', 'their' and their title to Mx. They intended this change to be permanent and had already obtained a new Driving Licence in the name of Sid Jones.*

*The HR manager said that the University's protocols did not allow for such changes to be made after the start of term; it disrupted their record keeping and would have to wait until the end of term. Sid argued that this was unacceptable and asked why it would be any easier to do it then, rather than now. The manager said it was 'inconvenient'. Sid pointed out that, according to the Equality Act, the decision to deny his request must be a 'proportionate means of achieving a legitimate aim'.*

*Delaying the changes to Sid's record, which would result in ongoing embarrassment to them, would adversely affect their mental health and their ability to focus on their studies. This would be disproportionately uncomfortable for Sid (and to any other trans people in this situation) since the aim of avoiding 'inconvenience' could not be regarded as a sufficient reason for refusing their request, the manager relented and agreed to make the changes. As a result of Sid's situation, the HR manager realised that the University's usual protocol needed to be amended because it discriminated, indirectly, against trans people. This prompted the team to examine all their protocols*

to ensure that these did not inadvertently discriminate against trans or other protected groups.

## 2.4 Harassment

### Case Study Example 3

*Following his transition to live as a man, Mark started to use the University's fitness centre. The changing area had curtained cubicles, so he was able to change in private. However, a small group of young men started making comments between each other but deliberately within Mark's hearing. They repeatedly and deliberately used the pronoun 'she'. At first, he ignored it, but over the next few weeks it grew worse, and the sniggers and comments started as soon as he entered the changing room.*

*Mark eventually reported it to the university sports instructor. The next time Mark entered the changing room, the instructor was close behind him and heard the comments. He challenged those making the comments, and they said it was just 'banter'. The students' behaviour was reported to the Head of Student Governance who warned them that their behaviour was 'harassment', and unlawful. They were denied access to the gym for the remainder of the term, required to give written apologies to Mark, and given a warning that they risked expulsion if any further incidents occurred.*

*This is a robust and appropriate response to harassment.*

In addition to the inappropriate behaviours of the young men, the use of the pronoun 'she' was extremely offensive. **In general, using the wrong pronouns, names and titles, if deliberate and, especially if repeated, amounts to unlawful harassment.** It is emotionally damaging to the individual and must always be treated as a serious matter. **The University provides clear pathways for students to complain when they are treated in this way. Trans students may also be allocated a particular individual to whom they can apply in these circumstances.** A person making occasional, unintended slips in the early days of an individual's transition should apologise immediately and make a great effort not to repeat the error.

## 2.5 Victimisation:

### Case Study Example 4

*Joan transitioned during the vacation. She was queuing at the cafeteria when she heard Sarah, one of the people serving, say to her colleague "you take this one, I'm not serving that tranny". Joan told the cafeteria manager what had happened. She responded, "How horrible for you. Why don't you try that little coffee shop on the other side of the campus"?*

Victimisation occurs when someone is treated badly as a direct result of having complained, either themselves, or when someone else has complained on their behalf, about discriminatory treatment under the EqAct. The response of the manager would amount to victimisation, because instead of tackling the discriminatory behaviour of the cafeteria employee, Joan was effectively 'punished', by being told to go elsewhere. The cafeteria is a contracted service, but the University requires that such services abide by the equality and diversity policy of the University. This is clearly stated in the contract. The manager and her staff were warned that they were in breach of their contract which would be terminated if this happened again. With Joan's agreement, a

meeting was arranged between her, the manager and Sarah. Sarah apologised for her comment.

## 2.6 Human Rights Act

The Human Rights Act 1998 (HRA) (Article 8) ensures the right to respect for private and family life, at home and in correspondence. This includes, for example: letters, telephone calls, text messages and emails. The HRA also protects people from degrading treatment (Article 3). 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.

## 2.7 The Gender Recognition Act, 2004 (GRA)

The Gender Recognition Act 2004 allows those who have changed their gender role and expression, permanently, and who have already lived for two years according to their affirmed gender (after transition), rather than their birth sex, to obtain a gender recognition certificate (GRC). No medical treatment is required.

This means that they have their new gender status, 'for all purposes'; the person automatically qualifies for a new birth certificate if the birth was originally registered in the UK. If a person has applied for, or has already obtained 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, or a student, is trans or has a trans history, and the staff member shares that information with another person, without obtaining the trans person's consent, this risks being a criminal act. There are a few exceptions to this rule, but these are not likely to be applicable in employment and education situations.

A GRC is not needed in order to change one's name, title, pronouns, or gender expression generally. (see changing records below) About 5,000 people have GRCs<sup>3</sup> in a potential population of about 400,000 (binary identified adults). Not having a GRC must not be used to disadvantage a trans person. They still have a right to absolute confidentiality.

**Asking to see a GRC is not good practice, and may be regarded as harassment and an invasion of privacy. It is therefore important to treat all trans people as though they have the protection of a GRC, and therefore regarding their trans history or status as 'protected information'.** Birth certificates should also not be requested. Identification can usually be provided by passports or driving licences, both of which can be obtained by producing a doctor's letter.

Despite discussions and debates about extending the scope of the GRA, following examples in other jurisdictions, the UK government has not yet made these amendments to include non-binary and non-gender individuals, or those under 18 years of age.

Both straight (heterosexual) and gay (homosexual) couples may be married or in Civil Partnerships. Where the status of their relationship changes, owing to the transition of one member of the relationship, and that person wishes to obtain a Gender

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<sup>3</sup> The GRA was enabled in 2005. The date of writing is 2020.

Recognition Certificate, their partner/spouse will need to agree, formally, to the nullifying of their legal status as a couple. This legal requirement has become known as the 'spousal veto' since it has the capacity to prevent the trans partner from obtaining a GRC. Where the existing marriage or civil partnership is ended, if desired, a new legal arrangement recognising their changed relationship, may be instituted.

## **2.8 General Data Protection Regulations (GDPR) 2018:**

All IT records of the individual's personal life and medical history ("sensitive personal data") must be secured in line with GDPR including password-protection, and should be "kept for no longer than is absolutely necessary". 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. Employers should note that an individual who suffers a detriment 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 any resultant damage.

## **3. TRAINING AND AWARENESS**

Social interactions may occur between trans individuals and other people on our campus. Any improper language or behaviour can cause lasting disadvantage to the person towards whom the behaviour is directed. Therefore, training across the board, will be essential. This may involve professional trainers, local trans groups, and e-learning resources.<sup>4</sup> The University expects all its students and staff to be aware of its respect always and inclusion policies, and its zero tolerance towards bullying and harassment. In addition to the contribution by members of the Human Resources Team, Equality, Diversity and Inclusion Team (EDI), Student Advice and Wellbeing Team and the Student Administration Team, The University expects our academic staff to be pro-active in advising and monitoring their students regarding the expectation of the University with regard to equality, diversity and inclusion.

The University will:

- Provide training for staff and students about how to interact respectfully with trans people. It is important to ensure that all senior members of staff are familiar with the guidance regarding transition and support for trans, non-binary and non-gender staff members and students, and fully understand the impact of legislation, especially the Equality Act.
- Check existing policies and protocols and change them where they might disadvantage a trans, non-binary or non-gender person, in order to avoid 'indirect discrimination';
- Provide a policy for the transition of trans staff and students
- Appoint an experienced 'go-to' person to whom trans people can go for help
- Monitor the diversity of staff and students and would include trans, non-binary and non-gender identities
- Take 'positive action' to recruit from under-represented minority groups
- Publicise a Code of Conduct in relation to all diversity and inclusion

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<sup>4</sup> Elearning at <https://www.gires.org.uk/e-learning/transgender-awareness-for-employers-service-providers/>

- Raise awareness of where to go and what will happen if someone experiences or witnesses transphobic discrimination.
- Run staff training and celebratory events to support trans staff and students e.g. LGBT History month;
- Ensure a Press statement is ready for any situation where the university might be questioned about, for instance, a lecturer who is undertaking transition.

#### 4. **PRESS STATEMENT**

A Press statement would be released if the need arises. Staff who are likely to receive incoming calls from the media would be briefed on how to deal with such calls. Intrusive questions would not be answered. In most circumstances it would only be necessary for them to indicate that an equality and diversity statement is on the website (home page) and will be adhered to by the University. This includes stringent privacy and respect measures. In reality, the transition of a student or a non-academic staff member is unlikely to excite interest, but the transition of senior, and sometimes quite high-profile academics, might.

A bland statement should be prepared, with the agreement of the person concerned. Usually, this will not identify the individual. If the identity of the individual becomes known to the media, the University would not give details to the press, unless expressly permitted by the individual concerned. Where this does occur, a risk assessment should be undertaken immediately. If door-stepping by journalists or anyone else occurs, it may be necessary to help the individual move temporarily away from their present address. The University would consider involving the police and the Press Complaints Authority if necessary.

#### 5. **TRANSITION OF A STAFF MEMBER OR STUDENT - OVERVIEW**

Trans people are often nervous about revealing the fact that they intend to transition, so it is important that when they do, the news is welcomed, but not shared unless the trans person gives prior agreement. It is also important to understand that being trans does not denote a mental illness,<sup>5</sup> and a change of gender role and expression is not a life-style choice. The person's gender identity is not changing, although in some cases it may be fluid. External characteristics are re-aligned with each individual's identity. Some individuals make relatively small changes: names, pronouns, titles, hair style, for instance, while others need more extensive, possibly medical, help to support their transition.

##### **A few Do's and Don'ts**

If a person tells you that they are trans and they wish to transition: first, be flattered that they have chosen to speak to you, because this is a big step for them; second,

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<sup>5</sup> World Health Organisation reclassified 'gender incongruence' in a non-psychopathological section of the International Classification of Diseases (ICD11) in 2019. See Reed T & Diamond M (2016) Biological correlations in the development of gender dysphoria, *The Lancet* June 2016; [http://dx.doi.org/10.1016/S0140-6736\(16\)30675-4](http://dx.doi.org/10.1016/S0140-6736(16)30675-4)

allow the person to lead the conversation. Maintain absolute confidentiality about your whole discussion, unless the person agrees otherwise.

**Don't ask** too many questions, particularly personal ones:

For instance, **don't say**:

“Are you sure; have you really thought about this?”

They will probably have thought of little else for years! Bear in mind that, if the person is a member of staff, they may have lived for a long time with this discomfort. Years of repression of the person's gender identity is likely to have contributed to a deteriorating mental state. Transition and associated treatments are therefore life-enhancing and even life-saving.

**Never ask** about treatment unless they raise it. Don't say “are you on hormones? or “Do you intend to have surgery?”

None of that is relevant, it's not polite, and if they are only now making a social transition, they will not have been able to access surgery anyway.

**Do ask**, “How can I help?”

“Do you have any support from colleagues (or fellow students) within the University?”

“Do you have family support?”

“Do you have local support, near your home?”<sup>6</sup>

Tread carefully. The person may open up and give you information, or it may be better to make another date to meet and chat. Allow the person to move at their own pace.

The first step is to talk to the individual and find out how they want to handle their situation moving forward. As far as possible, plans will be made jointly, following the individual's wishes, to ensure that the transition is successful.

## 6. TRANSITION OF A STUDENT

A student intending to transition is likely, in the first instance, to talk to a person they trust. This may be a lecturer, or a friend, who can support the student in contacting the Equality, Diversity and Inclusion Team, Student Administration Team or the Student Advice and Wellbeing Team. However, confidentiality is paramount, and nothing should be shared without the express permission of the student.

It is important that the University, at this time, emphasises the zero tolerance towards bullying, and warns that any such behaviour would be taken extremely seriously.

### 6.1 The Memorandum of Understanding (student)

The Memorandum of Understanding (MoU) is a confidential document that describes the steps to be taken in order for 'transition' to take place. It does not represent a binding and unchangeable arrangement, but rather a commitment to engage with, and

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<sup>6</sup> National database of geographically arranged support groups at [www.tranzwiki.net](http://www.tranzwiki.net)



support, the student at all stages. The MoU itself is a sensitive document that must not be accessible to those not immediately involved in drawing it up. Hard copies must not be accessible to unauthorised personnel.

The initial meeting and the drafting of the MoU may be undertaken by a member of Student Administration Department and/or the Equality, Diversity and Inclusion Manager and, possibly a member of Student Advice and Wellbeing. The student should be offered the support of a friend, possibly a Student Union member, the student's programme leader, personal tutor, or other staff directly responsible for the student's learning. However, it's important not to over-face the student with a roomful of people unless they agree. A person from one of these areas, or any other person chosen by the student may act as a mentor or 'buddy' to whom they can turn in the first instance, to provide immediate support when required.

In the early stages the MoU may be reviewed at agreed intervals, and possibly at the beginning and end of each term or at any time that the student asks for this to be done. However, it should not be necessary to continue this level of oversight beyond the first couple of terms, unless problems arise and changes need to be made. Prior discussions will pinpoint any likely problem areas. Steps will be taken to avoid these, rather than dealing with them after they have arisen. Action must always be with the consent of the student.

## **6.2 Timing (student)**

Students may transition at any time by changing their gender expression and adopting a name and pronouns that accord with their gender identity. Sometimes this is achieved over a vacation period and the student returns with all these things in place. No official evidence is needed for these social changes to be made. A simple signed statement of intent is sufficient for this to be facilitated. Timing of doctor's or other appointments associated with transition may be organised out of term time, but treatment in the NHS is unpredictable. Students may find they can't always avoid appointments during the term. They may need help to catch up any time missed.

It is not usually necessary for students to take time out in connection with hormone therapy. Top (chest) surgeries for trans men will require recovery times which will be estimated by the surgical team. Lower (genital) surgeries do require lengthy recovery times. Referrals for lower surgeries are not, in any case, made until at least a year of living according to the affirmed gender, and associated treatments and assessments have been carried out. In practice the waiting times are much longer. Many trans people do not choose to have lower surgery. However, if they do need to have a prolonged absence, it may be necessary for the student to speak to their lecturer or Degree Programme Leader about temporarily suspending studies.

## **6.3 Changing records and confidentiality (student)**

Changing pre-existing records and certificates is important for the student because they will, for instance, need evidence that does not reveal their gender history when providing documentation for future employers. The University will be proactive in facilitating this where exam boards are concerned. Evidence such as a doctor's letter, or a Deed Poll should suffice for updates of documents to be made. Do not ask for a Birth Certificate or GRC. Student registration must be updated, but care must be taken

to avoid highlighting the student's transition when making a link between the old and the new registration.

Previous records must be updated, replaced or concealed so that they cannot be accessed inadvertently. Sensitive information such as a person's previous gender status, must be kept for 'no longer than is necessary'. Failure to conceal this information would risk breaching the GDPR, as well as HRA and EqAct.

The University should also be aware that, sometimes, for cultural or other reasons, a student's family may not be aware of, or accepting of the transition of the student. Revealing this information may put the student at risk so check before using new names and pronouns on correspondence.

Name change can also be effected through Statutory Declaration at a Magistrates' Court, or more simply through a Deed Poll. The UK government recognises both unenrolled and enrolled deed poll processing for name change. The University accepts both, but the enrolled process potentially removes privacy, so name change is best undertaken using the unenrolled version.

#### **6.4 Informing others (student)**

The extent to which other students and academic staff will need to be informed will vary with the individual. As a general rule, specific information about the transition of a student should be limited to the smallest number possible. If the student interacts with only a small group of other students, it may be only this group that needs to be told. It will be up to the student concerned to indicate who they want to be told, and who will tell them. Students are now much more aware of trans issues, and will usually take this information in their stride. It may not be necessary for any special arrangements to be made, unless the student wishes, for instance, a person from the EDI, Student Advice and Wellbeing or Student Administration Team, to talk to the other students. This provides an opportunity for emphasising the University's zero tolerance for bullying. However, the student may choose to do it themselves. It can also be done by sending out an email to all the relevant people. There are several options from which the student can choose.

#### **6.5 Medical interventions**

It may be necessary for a student who transitions to have contact with the medical personnel, possibly a GP and nurse, who look after the university population. Liaison between the student's GP and the University's GP may be required. Overseas students will be dealt with on a case by case basis. Information about treatment can be accessed in the UK Good Practice Guidelines.<sup>7</sup>

#### **6.6 Toilets and changing facilities (students and staff)**

Where facilities are designated 'men', 'women' or similar, a person who has transitioned, to live in their affirmed gender may, from that moment, use the toilets that accord with their gender identity (not the sex assigned at birth). University buildings may also have unisex/gender neutral facilities, which are particularly useful for non-binary people, but trans people must not be required to use these unless they choose to. Building regulations require a given percentage of disabled toilets to be available at

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<sup>7</sup> <https://bit.ly/36aD7zX>

all times for disabled people. Care must be taken not reduce the number of these unreasonably by relabelling them 'gender neutral' and allowing other students without disabilities to use them.

Changing facilities may also be accessed in the same way in accordance with the individual's gender identity. The University will ensure that sufficient privacy exists in all facilities so that individuals, trans or otherwise, can be accommodated.

## **7.0 TRANSITION OF MEMBER OF STAFF**

A member of staff who transitions will follow a similar path to a student in that situation. Staff will need to speak to their Line Manager. In order to agree a Memorandum of Understanding, those attending may include a HR representative, an Equality and Diversity Team member, and possibly a Union representative if relevant. A person undergoing transition as an employee of the University, should also engage with HR to discuss Pensions and Insurance, to establish what, if any, effect this may have on these policies. Those employed as academics who plan to transition will also need to speak personally to their Academic lead. Academic staff, may choose to inform their students personally, or a letter could be sent by the University to the relevant students. It may be necessary to notify other academic institutions with which an academic who undertakes transition, may have links.

If there is a requirement for a record to be kept regarding the sex on the birth certificate, access must be strictly limited to those who 'need to know' because their specific duties are involved. They must maintain complete confidentiality. Revealing a person's previous gender details could lead to disciplinary action.

### **7.1 Timing (staff)**

In the case of staff, particularly those who are academics involved in day to day interactions with students, it is helpful if social transition does not occur in term time. However, if this is unavoidable, the University will make arrangement to accommodate this.

### **7.2 Time off for treatments**

Time of for treatments associated with the transition of employees is specifically protected under the Equality Act 2010 so, in order to avoid indirect discrimination, trans people may need to have time off that is not in line with the University's policy for other employees.

Timescales may change over time, and be unpredictable if treatment is in the NHS. 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 and appointments are subject to change.

It is not usually necessary for people to have time off work in connection with hormone therapy. Top (chest) surgeries will generally require shorter recovery times, than lower (genital) surgeries, but there will be great variation depending on the individual, their surgeon, and the actual surgery carried out. So the trans person should obtain an estimated time, from the surgical team. Lower surgeries are not, in any event,

scheduled until, at least, the end of the first year of living according to the affirmed gender. Facial hair removal and speech and language therapy may also necessitate some agreed time off work.

### **7.3 Changing records and confidentiality (staff)**

Changing records for staff involves a similar process as for students. Education certificates issued by the University, must be updated, so that a person seeking a job elsewhere would have the necessary documents in their new name, and any future employer would not learn of their past.

HR will need to be informed in case the necessary changes impact on other university policies. A person or persons in HR will be specifically allocated to dealing with this individual's documentation. Any documents that indicate a change of gender status are 'sensitive', and must be treated as completely confidential. IT documents must be password protected, and any paper documentation must be in double sealed envelopes with a named person on the envelope who may have access if necessary. Unless circumstances prevent it, the individual must still be asked for their permission, and be told the reasons for accessing them. This documentation should be locked away separately from other files. In cases where DBS checks need to be updated, the sensitive case process should be used.<sup>8</sup> When providing references for a former member of staff who has transitioned, only the current name, pronouns, gender status, and title must be used.

### **7.4 Changing name by Deed Poll (staff)**

The UK government recognises both unenrolled and enrolled deed poll processing for name change. The University accepts both, but the enrolled process potentially removes privacy, so name change is best undertaken using the unenrolled version or a Statutory Declaration which can be witnessed in a Solicitor's Office or a Magistrates' Court.

Registration of academics on an Intranet service may still cause problems because these systems are not necessarily geared to changing gender markers. This can cause embarrassment for a person whose name has been changed, but who retains the original gender marker.

### **7.5 Informing others (staff)**

Decisions about who needs to know about a member of staff undertaking transition, will be taken jointly with the individual's academic lead and the Equality, Diversity and Inclusion Manager. At some stage, the relevant students will need to be notified. The academic staff, for instance, may choose to inform their students personally, or a letter could be sent by the University to the relevant students. It may be necessary to notify other academic institution with which an academic who undertakes transition may have links.

As mentioned above an allocated person in HR will need to deal with any possible impact on other employment policies or provisions. Staff who work for instance, in maintenance, catering, or cleaning will probably only wish the group of people they work with on a daily basis to be informed. It may be necessary for a member of staff

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<sup>8</sup> Disclosure and Barring Service: Phone: 0151 676 1452; Email: sensitive@dbs.gsi.gov.uk  
Address: The Sensitive Application Team. Customer Services, PO BOX 165, Liverpool, L69 3JD

who transitions to have contact with the medical personnel, possibly a GP and nurse, who look after the university population. Liaison between the staff member's GP and the University's GP may be required. Doctor's needing guidance can access the UK Good Practice Guidelines;<sup>9</sup>

## **7.6 Occupational health (staff)**

The role of Occupational Health (OH) will be to advise the University on fitness for work issues. This includes providing appropriate advice on any medical issues which may impact on an individual's ability to carry out the full scope of the job.

Generally speaking, trans people are not more at risk than their work colleagues. Where the job is physically demanding, the University should ensure that its health and safety precautions include ongoing Risk Assessments for trans employees. Trans women may lose upper body strength when having hormone treatment. Before having breast surgery, trans men wear breast binders which restrict their movement and may cause back problems. Assessments should take account of these possible risk factors which may affect staff providing services such as catering, building and general maintenance.

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, social transition. As mentioned above, 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 have to have two days' beard growth prior to treatment.

Trans people hardly ever wish to change their job within an organisation, but if they request this, as a temporary measure, the employer may need to consider this.

A few occupations may involve an Occupational Requirement (OR) where the work to be performed is only by a person of one specific sex. Trans people must not lose their jobs because of this. Trans people with GRCs must be regarded as being of the post-transition gender status for the purposes of ORs. Others who do not have GRCs, may be just as suitable. Common sense should prevail. If discrimination is deemed necessary, this must be 'proportionate to a legitimate aim'.

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 Occupational Health can expect the issues to be dealt with in the strictest confidence, as would be expected from any other practitioners providing care.

## **7.7 Insurance Matters (staff)**

The University is advised to enquire whether their underwriters have any particular policy with regard to gender reassignment which could impact on the person undertaking transition. Although this is unlikely, if, upon inquiry, potential difficulties are identified, these will be addressed by the university.

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<sup>9</sup> <http://www.rcpsych.ac.uk/usefulresources/publications/collegereports/cr/cr181.aspx>

## **7.8 Pensions and Retirement (staff)**

Employers should be alert to the fact that there is a legacy of potential problems regarding the age at which trans people can draw their pensions. However, changes in the law, including the equalisation of the age at which men and women can access pensions should, in due course, overcome any difficulties for trans people in accessing their pensions.

## Appendix 1 - TERMINOLOGY – SUPPLIED BY GENDER RESEARCH AND EDUCATION SOCIETY (GIRES)

### 1. Introduction

Terminology in the '**transgender**' field (see below) is varied and constantly shifting as understanding and perceptions and awareness improves. The terms described below may change in their usage and become outdated. **Gender diversity/ gender variance/ gender nonconformity** are general terms that cover people whose gender identity and/or expression fall outside typical cultural gender expressions.

The concept of a binary social construct that recognises only men or woman fails to recognise 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>10</sup>

### 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. Where sex appearance and gender identity are congruent, the terms **cisgender** or **cis** apply.

However, some people experience a gender identity that is somewhat, or completely, inconsistent with their sex appearance. Historically, there has been greater recognition of those who, having been **assigned male, identify as women**; or having been **assigned female identify as men**. However, many more do not experience these binary gender identities: man or woman, 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 have the right to self-identify, and many reject binary tick-boxes, and describe themselves as **non-binary**, or **gender queer**, and use terms such as **pan-gender, poly-gender, third gender, neutrois, gender fluid** (fluctuating). Some reject the gender concept altogether and regard themselves as **non-gender**.

### 3. Pronouns

Those who change their gender expression from man to woman or vice versa, will change their pronouns from 'he' to 'she', 'him' to 'her, and vice versa. But non-binary people usually choose more neutral pronouns such as: they, per, zie, fey. 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 (see below) is unacceptable, and may be referred to as '**dead-naming**'.

### 4. Sex

Sex refers to the biological **male/female** physical development – the phenotype. In an infant, the sex is judged entirely on the genital appearance at birth, but internal reproductive organs, skeletal characteristics and musculature, and the brain, are all sex differentiated – not necessarily completely consistently. Other factors such as

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<sup>10</sup> World Professional Association of Transgender Health (2011) Good Practice Guidelines for the assessment and treatment of gender dysphoria in adults <http://www.rcpsych.ac.uk>

karyotype (chromosomal configuration, typically XX=female; XY=male) 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.

## 5. 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 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 a man or a woman, a boy or a girl, especially in terms of 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 nonconforming individuals, causing a continuous source of stress in social situations. This can be particularly challenging for those who identify as non-binary or non-gender, and whose gender expression does not fit either the typical 'man' or 'woman' classification.

## 6. Gender incongruence/gender dysphoria

The mismatch between the assigned sex, and the gender identity may be described as **gender incongruence**. This term may be used to replace 'transsexualism' (see below). 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 evidence that in some individuals, the sex differentiation of parts of the brain is inconsistent with other sex characteristics, resulting in individuals having a predisposition to develop a gender identity that is not typically associated with their assigned sex.

## 7. Transgender

'**Transgender**' has had different meanings over time, and in different societies. Currently, it is used as an umbrella term describing all those whose gender expression falls outside the typical gender norms. It is often the preferred term for those who change their role permanently, as well as others who, for example, **cross-dress** intermittently for a variety of reasons including erotic factors (also referred to as transvestism). Those who live continuously outside gender norms, sometimes with, and sometimes without, medical intervention are covered by this term. There is a growing acknowledgement that although there is a great deal of difference between say, drag artists and people who change their role permanently, there are nonetheless areas in the transgender field where the distinctions are more blurred; for example, someone who cross-dresses intermittently for some years, may later change fully to the opposite gender role. Non-binary and non-gender identities also fall under this umbrella term.



## 8. Trans men and trans women

The expression **'trans'** is often used synonymously with 'transgender' in its broadest sense. However, in relation to the individuals concerned, the abbreviated version, 'trans' is more often used. Recently the asterisk has become an additional symbol of inclusion of any, and all, kinds of trans, non-binary and non-gender presentations – hence trans\* person. Many regard the asterisk as redundant, as it adds nothing to the other inclusive terms. **'Trans men'** are those born with female appearance but identifying as men; and **'trans women'** are those born with male appearance but identifying as women. The terms may also be used to imply a direction of travel, towards a more masculine or feminine gender expression, rather than a complete transformation of a person's gender status. People in this situation may also describe themselves as **'trans masculine'** or **'trans feminine'**. Many trans people, having transitioned permanently, prefer to be regarded as ordinary men and women. In these cases, where it becomes essential to refer to their pre-transition status, the phrase **'woman (or man) of trans history'** may be used.

## 9. Transition

**Transition** is the term used to describe the permanent full-time adaptation of the gender role 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. Transition does not indicate a change of gender identity. The person still has the same identity post transition; the changes are to their gender role, gender expression and sometimes their sex characteristics, to bring these in line with their identity. A period of 12 months living full-time in the gender role that is congruent with the gender identity is currently required before genital surgery is undertaken. Transition is more usually used in respect of binary identified trans people. Transition in non-binary individuals is more likely to be a shift in gender presentation, rather than a complete change of role and expression; it may or may not be supported by medical intervention.

## 10. 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 (see below).

## 11. 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. Such surgery is sometimes referred to as **gender (or sex) reassignment** surgery. The term **'sex change'** is not considered appropriate or polite. Trans women may have Speech and Language therapy, and 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.

## 12. Intersex conditions

There are a number of intersex conditions (renamed Disorders of Sex Development – a clinical description which many in the UK refuse to adopt). In some intersex conditions, the appearance at birth is atypical, being neither clearly male nor female. The sex (male or female) assigned, and the anticipated gender role (boy or girl) assumed at that time, may not be consistent with the core gender identity and may, therefore, result in a need to change the gender role at a later stage. In addition, some of these individuals may have had surgery neo-natally to create – usually – a female appearance. This surgery may lead to a poor outcome, since the individual may, in fact, identify as a boy. This occurs in a minority, but nonetheless significant, number of individuals treated in this way. Surgical intervention before the individual is able to give informed consent is now regarded as unethical and is considered unlawful in some jurisdictions.

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 in the same individual). 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. Most intersex conditions, are 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, which has led to male (XY) babies being surgically assigned as female and raised as girls. This strategy failed more often than it succeeded since the majority identified as boys.

## 13. Sexual orientation

Sexual orientation is a separate issue from gender identity. Sexual orientation is associated with the sexual attraction between one person and another. This is quite different from the internal knowledge of one's own identity. Trans people may be gay, straight, bisexual or, occasionally, asexual. Their sexual relationships may remain the same through the transition process or, occasionally they may shift. So a person who is living as a man, and is in a heterosexual relationship with a woman may, having transitioned to live as a woman, continue to be attracted to women and seek a relationship with a woman – or – may be attracted to men, and therefore seek a relationship with a man. Sometimes trans people make lasting relationships with other trans and non-binary people, so the possibilities are many and varied, and do not necessarily fit comfortably into typical categorisations of sexual behaviours. Those who remain in a long-term relationship, despite one partner having transitioned cannot be categorised by any existing terminology, since the sexual orientation of the non-trans partner does not change; the orientation of the trans partner may or may not shift, as described above. Sometimes, for clarity, the terms: **androphylic** (attracted to men); and **gynaephylic** (attracted to women) may be used.

## 14. Gender Recognition Act (2004)

The Gender Recognition Act (GRA) became effective in 2005. Currently (2017) 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.

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 government is considering simplifying the process of obtaining a GRC by introducing 'self-declaration'. This approach has already been adopted in several other countries, including the Republic of Ireland, without any adverse outcomes.

## APPENDIX 2 – FREQUENTLY ASKED QUESTIONS AND ANSWERS

### i) Can I transition without having surgery?

Transition marks the moment when an individual makes social changes to their lives that reflect their 'affirmed' identity. These changes usually include names, titles, and pronouns. Visible adaptation of clothing, hairstyle etc. may also be undertaken. Transition does **not** require any medical or other interventions although many will choose to reinforce their social status, and also diminish their discomfort, by altering their appearance through treatments such as hormone therapy, and sometimes surgery. This is the choice of the individual. You can transition socially without any medical treatment, including surgery.

### ii) Am I legally protected if I choose not to have surgery?

Medical interventions, including surgery, are **not** prerequisites for legal protection: neither under the Equality Act nor the GRA. Surgery or other medical treatments do not have to be undertaken or even planned. However, living full-time 'in role' as a man or woman, in apparent contradiction to birth sex, is a requirement, and must be evidenced, in order to access a GRC and a new Birth Certificate. However, if surgery is undertaken or planned, even though surgical interventions are not required in order to qualify for a GRC, the Gender Recognition Panel requires details of this surgery. There is no rational explanation for this requirement. You can still obtain a GRC and new Birth Certificate without surgery.

### iii) Differences of opinion

***“Can I say I don’t agree that people who do not undertake surgery can be classed as transgender”?***

Such an 'opinion' would betray ignorance rather than hate, so you could say it, but you would look silly. There are many reasons why trans people do not undertake surgery. Not being a 'real' transgender person is not one of them. It is a position that is completely contradicted by both the GRA and the Equality Act, neither of which require surgical interventions in order to be afforded legal protection

Differences of opinion are inevitable, but they can be ill-informed, hurtful and damaging to those on the receiving end. Repeated behaviour of this sort could amount to 'harassment' under the Equality Act 2010.

Such behaviours should be immediately reported and the University would respond by discussing this behaviour with the offender, perhaps bring them and the offended parties together and, hopefully, prevent further such events. Persistent bullying and failure to stop when reprimanded would be dealt with robustly by the University.

***Note that:*** a woman who persisted in arguing that trans people were a fiction because there are only male and female people, and was sufficiently strident and unpleasant in her assertions that ultimately she was dismissed from her job. She sued her employer, and lost her case.

### iv) Social Media

***If I am being attacked on social media because I am trans, can anything be done or do I just have to put up with it?***

Social media may be both a blessing and a curse. On the up-side, the links and information social media provides, can support trans people and educate others about gender issues. On the downside, it can be hurtful, ignorant, even dangerous to trans people's mental health. Where comments become 'hate-speech', they are potentially unlawful, and action must be taken against the perpetrator, if known, by the University. So, if you are being targeted either directly, or indirectly, through slurs aimed at trans people generally, you should report this immediately to the Student Advice and Wellbeing Team as students or the Equality, Diversity Team or the Human Resources Team as staff. The perpetrator would be tracked down, investigated for necessary actions to be taken. Continuing behaviour of that sort could lead to the student or staff member being suspended or dismissed.

The University will always respond robustly to complaints made about hurtful, damaging language.

***v) In my religion all transgender people as well as lesbian, gay and bisexual people, are regarded as sick and sinful. Should I be forced to share the same classes as them?***

**'Religion or belief'** combine to form a protected characteristic. This characteristic cannot be used to discriminate against other protected characteristics. No matter what your religion, culture, or ethnicity, you will not be allowed to have separate classes from LGBT+ groups, any more than LGBT+ people would be allowed to discriminate against others on the grounds of their different religions or beliefs.

***vi) What is the meaning of 'Preferred gender pronouns'?***

Preferred gender pronouns are the pronouns that a person chooses to use for themselves – For example: If Alex's preferred pronouns are "He" and "Him" then you could deduce that Alex is someone who identifies as Male and is happy for you to refer to them as a "He" or "Him". This helps to minimise misgendering (referring to someone by a different pronoun than the one they would like to be associated with).

Example of gender pronouns:

- Pronouns which are often associated with **men** are "He" and "Him"
- Pronouns which are often associated with **women** are "Her" and "She"
- **Gender neutral** pronouns include "They" and "Them"

It is important to note that people may wish to identify with a combination of pronouns and others which are not reflected above.

## Appendix 4 – GENDER TRANSITION SUPPORT AND ACTION PLAN TEMPLATE

This transition template will guide managers and academic departments to support staff or students going through the transition process. This information must be kept strictly confidential and regarded as a living document that will require updating regularly as further actions and details may need to be added. The content must only be discussed with relevant people with prior agreement of staff or student concerned. Additional support and guidance for staff, students and managers can be sought from the Equality, Diversity and Inclusion Team, Human Resources, Student Administration Team, Student Advice and Wellbeing and the Student Union.

Personal Details	
<b>Current name</b>	
<b>Grade (Staff)</b>	
<b>Year (Student)</b>	
<b>Line Manager / Academic Manager / Course Tutor</b>	

Support process and actions to be taken for Staff or Students Transitioning					
Please provide response to the points outlined below	Action to be taken	Start date, if applicable	Completion date, if applicable	Responsible person	Update on progress
<b>When do you wish to commence transition?</b>					
<b>Expected time for Social Gender Change?</b>					
Uniforms where applicable					
Certificates/Awards where applicable					

Pension Scheme details					
Name Badge					
IT systems – Including change of name and personal details					
Student Records (Student)					
HR Records (Staff)					
Bank details (Staff and Student)					
Voicemail (Staff)					
Business cards (Staff)					
<b>Health and Wellbeing Support:</b>					
Please state if you would require any health and wellbeing support. If yes, what kind of support, how and where?					
<b>Medical and Surgery Appointments:</b>					
Anticipated periods for medical and surgery interventions if applicable? When time off will be needed and when?					
<b>Time off work or studies as required:</b>					
Will time off be required, for example: Annual leave/sickness/other arrangement? If so, what time off will be required? When? and how will this be managed?					
<b>Current working environment:</b>					

Are there any reasonable adjustments to the role which should be considered to support the student or employee? Are there security aspects that would need to be considered, for example night working, etc.					
<b>Name and title change:</b>					
What will the employee or student new title be? What pronouns will be used and when will they start using these?					
<b>Management of confidential/sensitive information:</b>					
Who will keep this record?					
<b>Dress Code:</b>					
Are there any dress codes to be considered? Are new uniforms needed?					
<b>Toilets / changing room facilities:</b>					
In the absence of gender neutral toilets, at what point will facilities used change?					
<b>Training and Education:</b>					
Will colleagues require training to raise their awareness of Gender reassignment and transitioning? If yes, who will receive training? Who will provide the training and how? Where will training take place?					



Who needs to know about your transition	Who will tell them?	When?	Date completed
Line Manager			
Human Resources Business Partner			
Members of your Team			
Other Colleagues (please specify)			
For Students - Course Lecturer(s) / Tutors			
For Students – Course mates			
Others (specify)			

I can confirm that I agree with the content and detail of the above gender transition support plan

Signature – Student or Member of Staff

..... Date .....

Signature of Line Manager/Programme Leader

..... Date .....