

Trans staff and students in higher education

Revised 2010



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This publication updates ECU's previous guidance *Trans staff and students in higher education 2008*.

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Equality Challenge Unit welcomes comments and suggestions for future editions of this publication.

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Equality Challenge Unit

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Contents

Introduction	1
1 Background and context	4
1.1 Terminology	4
1.2 Use of language	8
1.3 The process of gender reassignment	9
1.4 The legal framework	11
2 Promoting trans equality within a higher education institution	18
2.1 Ensuring awareness of gender identity issues	18
2.2 Practical issues: from accommodation to sports	19
2.3 Bullying, harassment and discrimination against trans people	26
2.4 Monitoring trans staff and students	27
3 Responsibilities when supporting a person who is transitioning	30
3.1 Preparing and planning for a staff member's or student's transition	30
3.2 Managing the reactions of colleagues and fellow students	33
3.3 Supporting changes in gender presentation	34
References and resources	36
Legislation	39
Appendix A: suggested policy statement on trans equality	40
Appendix B: the transition process in a higher education setting	42
Appendix C: trans respect guidelines for staff and students	43
Appendix D: supporting a staff member or student during transition	44
Appendix E: indicators of successful policies	48
Appendix F: key contacts	49

Foreword

When Equality Challenge Unit (ECU) first published comprehensive guidance for higher education institutions on legal and practical matters relating to trans staff and students in 2008, it was considered, given the statistics available at the time, that it would be rare for institutions to have a trans member of staff or student. However, recent re-evaluations of the number of trans people show there are between 300,000 and 500,000 trans people in the UK.

In line with the re-evaluated figures, ECU has experienced an increase in queries from institutions looking for guidance on issues concerning staff and students who are transitioning while working or studying in higher education. While this suggests that institutions are succeeding in creating inclusive environments where people feel able to transition, institutions may feel unsure of how specifically to support trans students and colleagues.

In light of this, and due to the increased emphasis placed on gender reassignment by the Equality Act 2010, ECU has fully revised the guidance for the higher education sector. This guidance will help institutions to meet their legal responsibilities, ensure their policies and procedures better meet the needs of trans people, and most importantly, provide effective support to staff and students during transition.

The decision to transition to a different gender is not something a person undertakes lightly and the support of managers and colleagues, staff and fellow students is vital.

Introduction

This guidance is aimed at all staff in higher education institutions (HEIs), particularly those who manage staff or support or teach students. It will also be useful for staff in students' unions. The guidance is designed to be a resource for staff who are aware of or supporting a colleague or student who is considering transitioning to their preferred gender, is in the process of transitioning, or has transitioned. It can also be used to increase staff awareness of gender identity issues and inform the development of institutional policies and processes to support, and combat discrimination against, trans staff and students.

It is estimated that there are 300,000 trans people in the UK, 80 per cent of whom were assigned as male at birth. If we assume a more equal gender balance among trans people, estimates rise to nearly 500,000 (Reed et al, 2009). Not all these people will transition, but in the future between 50,000 and 90,000 are expected to present themselves for medical assistance. To date it is estimated that 10,000 trans people have received medical assistance to transition to their preferred gender. Some trans people have transitioned and gained legal recognition of their preferred gender without medical assistance.

Given the estimated number of trans people in the UK, HEIs are likely to have trans people among their staff and students. When an institution has a member of staff or a student who is transitioning or has transitioned to their preferred gender, a number of issues will arise, many of which are underpinned by legislation. This guidance describes those issues, summarises the law, and suggests clear steps to follow, drawing on examples and case studies from HEIs that have been through this process.

It is worth noting that every person is different: some people transition from one gender to another with ease and others do not; some people will transition to their preferred gender full-time and others will choose to live in their preferred gender part-time. Many younger trans people choose not to, or cannot, transition because of their age, lack of financial means and/or lack of autonomy from their family. Older trans people may fear losing their job and family if they permanently transition to their preferred gender, or may lack the financial means to transition.

Introduction

Whatever the individual circumstances, it is important that institutions are flexible, supportive, and make clear that discrimination and harassment against trans people will not be tolerated.

Section 1: Background and context

The first part of this guidance includes a glossary of terms used in relation to gender identity. It also highlights differences between sexuality and gender identity, which are often mistakenly confused. It contains guidance on appropriate language and outlines the process of gender reassignment that some trans people undergo. This section concludes with a comprehensive overview of the legislation that protects transsexual people who are under medical supervision, including the Gender Reassignment Regulations 1999, the Gender Recognition Act 2004 and the Gender Equality Duty in the Equality Act 2006. It also touches upon the Equality Act 2010, which will extend protection to transsexual people who are not under medical supervision. Not all trans people are transsexual, and it is considered good practice for HEIs to extend their work to promote trans equality to all trans people.

Section 2: Promoting trans equality within a higher education institution

The second part of this guidance highlights the importance of raising awareness of gender identity issues within an HEI. It covers practical issues, including degree certificates, insurance issues, recruitment, pensions and single-sex facilities. As well as being a practical tool, this section will also help HEIs develop proactive policies and procedures that are inclusive of trans people.

A section on bullying and harassment provides examples of unlawful discrimination and suggestions on steps that can be taken to prevent it. The final part of this section covers monitoring. There is currently no legal requirement to monitor trans people in higher education, but some institutions do so to help them ensure their policies and practices are meeting the requirements of their trans staff and students.

Section 3: Responsibilities when supporting a person who is transitioning

This part of the guidance contains detailed information about HEIs' responsibilities for supporting a staff member or student through the transition process. The steps that need to be taken to support an individual's changes in gender presentation are outlined, as well as those needed to manage the reactions of colleagues or fellow students.

Appendices

The appendices include a model policy statement on trans equality, a simple diagram of the transition process, and a checklist of aspects to consider when supporting a trans person through their transition. Appendix F contains a list of useful contacts for managers, colleagues and trans people.

1 Background and context

1.1 Terminology

In order to understand the social, medical and legal implications of trans issues, and the impact they have on an institution's equality agenda and employment practices, it is important to be aware of the variety of terms that may be used. This section explains the terms used in this publication and elsewhere.

Acquired gender

The new gender of a person who has socially transitioned and had their gender reassigned and/or legally recognised. It is possible for an individual to transition and receive legal recognition of their acquired gender without medical assistance.

Gender

Gender consists of two related aspects: gender identity, which is a person's internal perception and experience of their gender; and gender role or expression, which is the way a person lives in society and interacts with others. Gender is less clearly defined than anatomical sex, and does not necessarily represent a simple binary choice: some people have a gender identity that is neither clearly female nor clearly male; however, the overwhelming majority of the population has a gender that accords with their anatomical sex. It should be noted that currently, for the purposes of the law, gender is binary – people can only be male or female.

Gender dysphoria and gender identity disorder

Gender dysphoria is a medical condition in which a person has been assigned one gender (usually at birth on the basis of their sex), but identifies as belonging to another gender, or does not conform to the gender role society ascribes to them. Gender dysphoria is not related to sexual orientation. People who have severe gender dysphoria are diagnosed with gender identity disorder.

A person with gender dysphoria can experience anxiety, uncertainty or persistently uncomfortable feelings about their birth gender. They may feel that their gender identity is different from their anatomical sex. This dysphoria may lead to a fear of expressing their feelings and a fear of rejection and in some cases deep anxiety or chronic depression. Sometimes a person with gender dysphoria assumes an identity in the opposite sex. This may involve undergoing hormone and, perhaps, surgical procedures to change their sex.

Gender presentation/expression

While gender identity is subjective and internal to the individual, gender presentation, either through personality or clothing, can determine how a person's gender is perceived by others. Typically, trans people seek to make their gender expression and presentation match their gender identity, rather than their birth sex.

Gender recognition certificate

Gender recognition certificates (GRC) are issued under the **Gender Recognition Act 2004** by the gender recognition panel. The holder of a full GRC is legally recognised in his or her acquired gender for all purposes. This means that the person in question now belongs to their acquired gender in both a legal and a social context. A full GRC is issued to an applicant if they can satisfy the panel that they fulfil all the criteria outlined in the Gender Recognition Act 2004. The act requires that the applicant has, or has had, gender dysphoria, has lived in their acquired gender for two years prior to the application, and intends to live permanently in their acquired gender. See page 13 for more information about gender recognition certificates.

It is unlawful to ask a trans person for a GRC, as once a person has obtained a certificate they are required to disclose their past only in very rare circumstances. See section 2.2 of this guidance for forms of identification that you can ask a trans person to provide.

Gender/sex reassignment

Gender reassignment is a process undertaken under medical supervision to reassign a person's gender by changing their physical sexual characteristics. Gender reassignment or transition includes some or all of the following social, legal and medical adjustments: telling one's family, friends, and/or colleagues; changing one's name and/or sex on legal documents; hormone therapy; hair removal, voice therapy and possibly (although not always) chest and/or genital surgery.

Gender reassignment is also referred to as sex reassignment. In fact, the term gender reassignment is considered by some to be inaccurate, as people with gender dysphoria do not change the gender with which they identify, they change their sexual characteristics to match their gender identity.

1 Background and context

Intersex

Intersex is a biological condition that people are born with. Intersex people can have a combination of male and female anatomy; as a result, their biological sex cannot easily be classified as either male or female. Until recently, the medical profession encouraged parents to elect for surgery on their intersex baby so that their child would conform to stereotypical male or female appearances. Subsequently, many intersex people encountered difficulties later in life as the gender prescribed by the medical profession and their parents was different from the gender with which they associate. Today, parents are advised to delay surgery until their child reaches puberty so that the child can inform decision-making. Not all intersex people opt for surgery, and many will consider themselves to be intersex rather than male or female.

In addition, there are a number of sex chromosomal variations which may not produce any visible anatomical variation in a person, and which may not be detected until puberty or even later in life. This can include medical conditions such as Turner's syndrome, Klinefelter's syndrome (XXY syndrome), and mosaicisms whereby half of a person's cells have one form of sex chromosomes and the other half another (eg XX/XY mosaicism).

While trans issues are different from intersex issues, intersex people who had their gender incorrectly prescribed at birth may decide to transition to the gender with which they identify later in life.

Legal gender

In the past, a person's legal gender was defined by their birth certificate and could not be changed. The **Gender Recognition Act 2004** means that people can now apply to gain recognition of their acquired gender for all legal purposes.

Lesbian, gay, bisexual and trans (LGBT)

While trans status is different from sexual orientation, the forms of prejudice and discrimination directed against trans people can be very similar to those directed against lesbian, gay or bisexual people, and historically the two communities have coexisted and supported each other. As a result, action and support groups often have a broader remit than sexual orientation.

Physical (anatomical) sex

The term sex refers to a person's physical or anatomical sex (male or female).

Real-life experience or test

Real-life experience is a phase during gender reassignment in which the individual must live, work and study in the gender with which they identify before they can start hormone therapy and/or undergo surgery. Trans staff and students may require confirmation from their institution that they are undertaking real-life experience. Real-life experience can also be called the real-life test.

Sexual orientation

Sexual orientation is different from gender identity, and the two are not related. Trans people, like any other people, can be heterosexual, lesbian, gay or bisexual.

Trans

An inclusive term for those who identify themselves as transgender, transsexual or transvestite. The term 'trans' can be used without offence but should only be used as an adjective, for example 'a trans student'.

Trans man

A person may describe themselves as a trans man – this is a person who is transitioning, or has transitioned from female to male. The term female-to-male (or FTM) is a medical term indicating the direction of a person's transition and may occasionally be used to describe a trans man.

Trans woman

A person may describe themselves as a trans woman – this is a person who is transitioning, or has transitioned from male to female. The term male-to-female (or MTF) is a medical term indicating the direction of a person's transition and may occasionally be used to describe a trans woman.

Transgender

An umbrella term for people whose gender identity and/or gender expression differs from their birth sex. The term may include, but is not limited to, transsexual people and those who see themselves as not clearly fitting into a male or female identity. Transgender people may or may not alter their bodies hormonally and/or surgically. The term transgender should only be used as an adjective, for example, 'transgender people'.

Transitioning

Transitioning is the term used to describe someone changing from one gender to another, with or without medical intervention.

1 Background and context

Transphobia

Transphobia is a term used to describe discrimination that can be experienced by trans people, which arises as a result of their expression of their gender identity (see Gender).

Transsexual person

A transsexual person is someone who feels a consistent and overwhelming desire to transition to their preferred gender. Someone in this position will have the medical condition gender dysphoria. This term should only be used as an adjective; individuals should be referred to as 'transsexual people' not 'transsexuals'.

Transvestite or cross-dresser

The terms transvestite and cross-dresser refer to someone who dresses in the clothing typically worn by the opposite sex. Generally, people who are transvestites/cross-dressers do not wish to alter their body and do not necessarily experience gender dysphoria.

1.2 Use of language

Once a trans person has made known their chosen name, this name should be used in all circumstances, rather than their birth name.

A person who identifies as a certain gender, whether or not they have taken hormones or had surgery, should be referred to using the pronoun (he or she) appropriate for that gender. For example, if the person wears a dress and uses a woman's name, the feminine pronoun is appropriate. If you are not sure what the correct pronoun is, ask the person what they prefer.

It is not usually appropriate to use the terms 'sex change' or 'pre-/post-operative'. These imply that the process of transition must involve some form of surgery, which may not necessarily be the case.

It is never appropriate to put quotation marks around either the trans person's chosen name or the pronoun that reflects their gender identity. Some terms are discriminatory, and should not be used. These include 'she-male', 'he-she', 'it', 'trannie', 'tranny' and 'gender-bender'.

1.3 The process of gender reassignment

In order to support trans staff and students, it is useful to understand the medical process of gender reassignment that some trans people undergo. Despite recent research showing that gender dysphoria is a biological condition, the medical framework for gender reassignment is based on the premise that gender dysphoria is a mental illness. Subsequently, the framework is controversial and perceived by some to be outdated and discriminatory and, in many respects, equivalent to a medical model being used to 'diagnose' homosexuality or define disability. At present, though, it forms the framework for the majority of transitions, and is the basis of understanding for medical professionals.

The first stage of diagnosis involves a visit to a general practitioner who, except in rare cases, will then refer the person to a psychiatrist. The psychiatrist will undertake a detailed enquiry into gender development in childhood and puberty. They will also note details of the person's current life circumstances and general stability before carrying out psychological assessments. There may be evidence of clinically significant long-term anxiety, distress and impairment in social and occupational functioning, or the person may have a deep dissatisfaction with their gender identity. If the person is diagnosed with gender dysphoria, they are referred to a gender identity clinic. In some cases, general practitioners may refer a person directly to a gender specialist or gender identity clinic.

On referral to a gender identity clinic, alternatives to sex reassignment are considered and the person is given a range of options, together with their implications. At this stage, many people will choose to transition to the gender role with which they identify. To achieve this, they may receive counselling, speech therapy, electrolysis (removal of body and facial hair) and/or hormone therapy. Hormone therapy can play an important role in the gender transition process. Some trans people may feel that the changes they experience as a result of ongoing hormone therapy are sufficient, and they may not feel a need to progress beyond this stage.

International medical standards (Meyer et al, 2001) require that a person has undergone real-life experience (also known as real-life test) of at least three months, or a minimum of three months' psychotherapy, before hormone therapy can be prescribed or breast surgery performed. The real-life experience requires a person to fully adopt the gender with which they identify in their everyday life.

1 Background and context

They are required to work and study in their new gender, and may require official confirmation from their institution that they are doing so.

In some cases, the person may choose to undergo genital surgery. International medical standards require that they must have undergone real-life experience, and usually received hormone therapy, for at least a year before genital surgery can be performed.

The length of time it will take for a person to see a psychiatrist and a gender identity specialist and to receive hormone therapy and/or surgery will depend on whether they transition under the NHS or privately. Some trans people may have to undergo some gender reassignment procedures privately if their local health authority cannot afford the costs of the procedure. Opting for private healthcare services normally equates to a quicker transition, but it can be prohibitively expensive and as a result some trans people also explore the feasibility of undergoing procedures abroad.

Under the NHS, assessment by a gender identity specialist and the prescription of hormones can take several months or even years. Subsequently, some individuals may self-administer hormone therapy or opt for private medical assistance. Following this, there is typically a period of one or more years before a person is accepted for surgery.

Trans people will require time off work or study for appointments (for example, psychotherapy, voice therapy, hair removal), surgery, and recovery from surgery. Appointments to see a specialist may involve travelling long distances, so could take a whole day. The time off work or study following surgery will vary greatly, from one week to around 12 weeks, depending on the nature of the surgery and the physical demands of the person's job or studies.

A female-to-male medical transition may involve taking the hormone testosterone. This produces largely irreversible effects of beard growth and masculine muscle development, as well as a deepening of the voice. A mastectomy may then follow and the ovaries may be surgically removed. A person may then undergo a hysterectomy. Penis construction, artificial testes implants and operations to relocate the urethra and the clitoris are available, but the surgery is complex, and not as fully developed as the procedures available for male-to-female transition.

A male-to-female medical transition may involve hormone replacement therapy. This will reduce levels of testosterone and will alter a person's body (for example, the distribution of fat will change). Breast implants may follow, and a person may also have electrolysis to remove unwanted hair and surgery to soften their facial features. If a person opts for genital surgery, the testes and erectile tissue of the penis are removed and an artificial vagina is created and lined with skin from the penis. Tissues from the scrotum are then used to create the labia, and the urethra is shortened and repositioned. This is one of the surgical options; there are several others.

1.4 The legal framework

Legislation covering gender identity issues focuses primarily on gender reassignment. However, it is good practice for HEIs to ensure their policies and procedures are inclusive of all trans people whether or not they intend to, are having, or have had their gender reassigned.

The Sex Discrimination (Gender Reassignment) Regulations 1999

The **Sex Discrimination (Gender Reassignment) Regulations 1999** extend the **Sex Discrimination Act 1975** to cover discrimination on the grounds of gender reassignment in employment and vocational training. The regulations cover direct discrimination, victimisation and harassment in employment or training on the grounds of gender reassignment, and apply to both staff and students.

The regulations protect a person who intends to undergo, is undergoing, or has undergone gender reassignment from unfavourable treatment on the grounds of their gender reassignment. This includes people preparing for medical treatment. Protection applies from the moment when the person indicates their intention to start the reassignment process, even if they subsequently change their mind.

Where a person needs to take time off work or study for medical assistance because of gender reassignment, the regulations provide that they should not be treated any less favourably than if the absence was due to sickness or injury. Also, a person must not be treated any less favourably than if the absence was due to another cause, such as the need to care for a relative. In such a case, the institution must have regard for the circumstances of the case before determining whether it is reasonable for the person to be treated no less favourably.

1 Background and context

Any reference to discrimination in employment or training against men or women in parts two and three of the Sex Discrimination Act (1975) also applies to individuals who have gender dysphoria. A claim can therefore be brought against an institution or individual person for any unlawful discrimination, including harassment.

An institution is automatically liable for discriminatory actions taken by anyone acting on their behalf, whether or not it was done with their knowledge, unless they can show that they had taken all reasonable steps to prevent such actions. This means that HEIs need to ensure their staff, contractors and other service providers (such as cleaning contractors) are aware of their obligations under the Sex Discrimination Act and the policies that they have in place to implement them.

The Equality Act 2010 (see page 17) will repeal the Sex Discrimination Act. The majority of provisions within the Equality Act are not due to come into force until October 2010. Key provisions within the Equality Act 2010 mirror those of the Sex Discrimination Act.

Genuine occupational qualification

In the vast majority of cases, a person's sex is of no relevance to their ability to do a job or follow a programme of study. However, the Sex Discrimination Act does recognise that, in some cases, being a particular sex can be a 'genuine occupational qualification' (GOQ). The Sex Discrimination (Gender Reassignment) Regulations 1999 amended the Sex Discrimination Act to outline the application of gender-related GOQs in relation to people who have undergone or are undergoing gender reassignment, including a provision to prevent employers from introducing a GOQ stating that a post-holder could not be a trans person.

Gender-related GOQs may apply to students who want to specialise in areas such as health and social care, counselling and youth work. As an employer, an HEI may need to apply a GOQ to certain posts in student services, for example, counsellors or for positions in single-sex halls of residence. The Sex Discrimination Act makes it clear that an employer must act reasonably in claiming a GOQ, for example, by considering whether tasks could be carried out by someone else. The GOQ must be identified at the beginning of the recruitment and selection process, and be stated in the application pack.

If a trans person has obtained a full gender recognition certificate (GRC), they are deemed in law to be of the gender to which they have transitioned, and must be treated in that gender with respect to jobs and course placements where GOQs apply. If a trans person does not hold a GRC, or is transitioning while in post or on a course that involves placements where GOQs apply, it is essential that the institution and the individual meet to discuss the situation as soon as possible, with the individual's trade or students' union representatives present, if required.

Where a trans person does not hold a GRC, the law allows employers, in very specific circumstances, to prohibit the trans person from taking up a post to which a gender-related GOQ applies. In such circumstances, the employer will need to demonstrate that this restriction is a proportionate means of achieving a legitimate aim. The Equality and Human Rights Commission recommends that HEIs should assume by default that a trans person is eligible for a job or placement, and seek expert advice in rare circumstances where the institution thinks otherwise.

At present, there is no GOQ for a person to be a trans person; an employer cannot specify that a post must be performed by a trans employee.

If necessary, institutions should request a birth certificate for evidence of a legal change of gender, not a gender recognition certificate.

The Gender Recognition Act 2004

The legal protection for a person who has fully transitioned (with or without medical intervention) is clear and unequivocal. The **Gender Recognition Act 2004** allows trans people who are able to satisfy the act's evidence requirements to apply to the gender recognition panel in order to seek full legal recognition of their acquired gender. The panel, which consists of lawyers and doctors, requires applicants to demonstrate that they:

- = have, or have had, gender dysphoria
- = have lived in the acquired gender for at least two years, ending with the date on which the application is made
- = intend to continue to live in the acquired gender for the rest of their life
- = can provide medical reports containing specified information

If an applicant is successful, they will be issued with a full or interim gender recognition certificate (GRC). Thereafter, the Sex Discrimination Act applies to this person in the same way as it would to anyone else.

1 Background and context

A full GRC enables the person to marry someone of the opposite sex or form a civil partnership with someone of the same sex. Anyone currently married or in a civil partnership would receive a time-limited interim certificate, as they are required to divorce their current marriage partner, have their marriage annulled or have their civil partnership dissolved before obtaining a full GRC. In terms of employment, it would be good practice to treat someone holding an interim GRC as if they had received a full GRC.

If their birth was registered in the UK, the holder of a full GRC can obtain a new birth certificate which does not disclose the fact that they have changed gender. The gender recognition panel will notify the general registrar that a GRC has been issued; the general registrar will contact the holder and issue a new birth certificate. The general registrar enters the person's details on the gender recognition register and their original birth register entry is marked, to indicate that the birth has been re-registered. The gender recognition register is not open to search by the public, and the disclosure of information contained in the register is prohibited. There are certain exemptions from this prohibition, for example in situations where information is required for the prevention or detection of crime.

Once a full GRC has been issued, a trans person is required to contact HM Revenue & Customs (HMRC) with their national insurance number in order to change their record. The gender recognition panel can notify HMRC if requested by the applicant. The record will then be restricted so that only specialist staff have access. If a person fails to notify HMRC, they may be liable for prosecution.

Crucially, the Gender Recognition Act also gives trans people privacy rights. Anyone who acquires information about someone's trans status is liable to criminal proceedings if they pass that information to a third party without the permission of the individual.

The Equality Act 2006: the Gender Equality Duty

The **Equality Act 2006** amends the Sex Discrimination Act 1975 to place a statutory duty, the Gender Equality Duty, on all public authorities, when carrying out their functions, to have 'due regard' to the need to:

- = eliminate unlawful discrimination and harassment
- = promote equality of opportunity between men and women

The Gender Equality Duty specifically requires public authorities to have 'due regard' to the need to address and eliminate discrimination and harassment of trans people in employment and vocational training (including higher education).

The Equality Act 2010 (see page 17) will repeal the Sex Discrimination Act and the Gender Equality Duty. It will introduce a broader Public Sector Equality Duty, which is due to come into force in April 2011.

To comply with the Gender Equality Duty, institutions are required to consider trans issues in the development of their Gender Equality Scheme objectives and to consider the impact of policies and procedures on trans staff and students. Institutions are also required to consult staff and students on their work to promote gender equality and tackle discrimination against trans people. To ensure the needs of the trans community are taken into account, it is generally helpful to consult trans advocacy groups as well as staff and students, as it is rarely appropriate to base policy decisions on the views of a single student or staff member.

The requirement to have 'due regard' means that the weight given to the need to eliminate discrimination and harassment is proportionate to its relevance to a particular function within an institution. Given that the number of trans people in the UK is likely to be between 300,000 and 500,000 (Reed et al, 2009), it is likely that an institution will have trans people among its staff and students.

It is important that institutions consider the following steps in order to demonstrate due regard to the need to eliminate discrimination and harassment against trans people.

- = Ensure equality, employment, academic and student policies and practices do not discriminate against trans people and, where appropriate, refer explicitly to trans equality issues – especially in relation to recruitment, admissions, dignity at work/study, access to facilities and services, and harassment policies. Larger institutions may wish to develop specific policies on gender identity in partnership with trade unions and students' unions (see appendix A for a suggested format).
- = Ensure trans perspectives are included in equality impact assessment processes. See *Conducting equality impact assessments in higher education* (ECU, 2007).
- = Keep up to date on current legislation in this area.

1 Background and context

- = Provide training and written guidance for staff on how the Gender Equality Duty (after April 2011, the Public Sector Equality Duty) applies to trans people, and how to support someone during the process of transition.
- = Set up a support network for trans staff and/or students; if numbers are small, join with other public sector organisations (for example, local authorities, health authorities, other post-16 education providers and the police).

The Data Protection Act 1988

Under the **Data Protection Act 1998**, trans identity and gender reassignment constitute 'sensitive data' for the purposes of the legislation. Therefore information relating to a person's trans status cannot be recorded or passed to another person unless conditions under schedule 3 of the Data Protection Act for processing sensitive personal data are met.

The Disability Discrimination Act 1995

In some cases, a person with gender dysphoria will experience uncertainty or persistently uncomfortable feelings about their birth gender. This can lead to anxiety and depression. In the UK, gender dysphoria is a recognised mental health condition, although this position is controversial and contested.

Although no case has yet been brought under the **Disability Discrimination Act 1995** in relation to gender dysphoria, a trans person could be protected under the act. The act defines a disability as a physical or mental impairment that has a substantial and long-term (that is, for more than a year) adverse effect on a person's ability to carry out normal day-to-day activities. The act requires institutions to make reasonable adjustments for people who have an impairment meeting the act's definition of disability. Reasonable adjustments for trans people could include adjusting working hours or coursework deadlines, or allowing the person to be absent during normal work or study hours for reasons relating to their transition (for example, voice therapy, counselling or recovery from medical procedures).

The Equality Act 2010 (see below) will repeal the Disability Discrimination Act. The majority of provisions within the Equality Act are not due to come into force until October 2010. Key provisions within the Equality Act 2010 mirror those of the Disability Discrimination Act.

The Human Rights Act 1998

The **Human Rights Act 1998** provides protection to trans people, principally under the right to a private life. The courts have interpreted the concept of 'private life' in a very broad way to cover, among other things, a person's right to express a sexual identity, to live a particular lifestyle and to choose the way they look and dress. It also means that personal information (including official records, photographs and letters) should be kept securely and not shared without the permission of the individual concerned. In addition, the right to privacy states that unless a public authority is acting in accordance with the law, there should be no interference by a public authority with a person's exercise of their right to a private life.

The Equality Act 2010

The **Equality Act 2010** gained royal assent in April 2010. The act strengthens and streamlines previous equalities legislation, which will be replaced when the Equality Act comes in to force. The act will be brought into effect through a series of commencement orders. For employment, education, provision of services and public functions, the expected commencement date is October 2010. The Public Sector Equality Duty is likely to follow in April 2011.

Gender reassignment is one of nine protected characteristics within the act, and it is also included in the Public Sector Equality Duty. The definition of gender reassignment within the act gives protection from discrimination to a person who has proposed, started or completed a process to change their sex.

The act offers more far-reaching protection from discrimination on the grounds of gender reassignment than existing equality law as it protects:

- = trans people who are not under medical supervision
- = people who experience discrimination because they are perceived to be trans
- = people from discrimination by association because of gender reassignment. For example, it would protect the parents of a trans person from being discriminated against because their child is transitioning

For further information on the Equality Act 2010 and its implications for HEIs, see www.ecu.ac.uk/subjects/equality-act-2010.

2 Promoting trans equality within a higher education institution

2.1 Ensuring awareness of gender identity issues

There is increasing public awareness of trans issues, yet if a member of staff (or potential member of staff) or student (or potential student) is trans, there may be an element of anxiety about how colleagues or fellow students, student services, human resources and the academic department will respond. It is good practice for an institution to ensure all managers, human resources and student services staff understand the law and its implications, and are familiar with gender identity issues. Failure to do so can have the following consequences.

Current members of staff or students:

- = may feel they cannot transition openly, despite being deeply unhappy in their current gender
- = may feel they have to leave the institution (without requesting references or completing their qualification or programme of study) and make a fresh start somewhere else to coincide with their new gender identity
- = may inadvertently discriminate unlawfully against a trans colleague or student

If staff members have not received training on gender identity issues, it will be more difficult for the institution to demonstrate that it has taken reasonable steps to prevent discrimination, for the purpose of mounting a defence against allegations of vicarious liability.

Potential members of staff or students:

- = who have transitioned may be concerned that, if their potential institution discovers that they were once of the opposite gender, they will be discriminated against, which can lead to anxiety and poor performance at interview
- = who plan to transition may think the institution is not committed to equal opportunities for trans people, and may turn down any job or programme offered
- = regardless of their gender identity, may see an omission of trans issues from equality policies as an indication that the institution is not committed to equality and diversity on a more general basis

It may be helpful, especially in larger institutions, to develop a specific policy for trans staff and students and to ensure this appears in both staff and student handbooks. A suggested format for such a policy is in appendix A.

2.2 Practical issues: from accommodation to sports

This section will be useful for HEIs when developing proactive policies and procedures that are inclusive of trans people.

Accommodation

Where accommodation is provided for students, every effort should be made to be flexible and treat issues raised by trans students with sensitivity and consideration.

When a student applies for accommodation and advises that they are transitioning, or intend to transition once at the institution, it is advisable to formally agree the point at which they will begin to live day-to-day in their acquired gender. This will enable the correct form of accommodation to be allocated from the start.

For students who begin to transition when living in accommodation, contracts should be flexible to allow students to leave single-sex accommodation when they begin to live in their chosen gender. Where accommodation is provided privately, the institution should ensure the providers have suitable processes in place to support transitioning students.

Confidentiality

Confidentiality is crucial. In specified circumstances, the Gender Recognition Act prohibits disclosure of the fact that someone has applied for a gender recognition certificate (GRC), or disclosure of someone's gender before the acquisition of a GRC. Such disclosure constitutes a criminal offence liable to a fine.

Criminal records checks

The Criminal Records Bureau (CRB) has implemented a process specifically for trans people who do not wish to disclose their trans status to their employer or placement provider. Trans applicants are not required to put their former names or gender on their CRB application form, but they must contact the CRB's sensitive applications team, ideally before their application is sent to the CRB. The trans person will need to send evidence of their previous name and gender with a covering letter confirming their current name, full address and a contact telephone

2 Promoting trans equality within a higher education institution

number. The sensitive applications team will then monitor the CRB application and deal with any queries that arise.

Where a conviction or other relevant information has been recorded in a previous name, this will be revealed. The person's former name and gender should remain confidential as long as the CRB has been advised of the conviction, or other relevant information, in advance by the applicant.

Degree certificates

A degree certificate is a legal document. Institutions will need to see legal proof of name change, for example a statutory declaration of name change or a birth certificate, to issue or reissue a certificate in a name different from that under which the student originally registered. Asking students or alumni for evidence of medical supervision is not appropriate, as not all trans people will be under medical supervision. It is unlawful to ask a person for a gender recognition certificate.

Dress codes

It is good practice to allow enough flexibility so that any dress codes do not reinforce binary gender choice or gender stereotypes. Dress codes that set out very specific and different requirements for men and women may create practical difficulties for some trans people.

Forms and questionnaires

When designing forms or questionnaires, bear in mind that some people prefer a further option in addition to 'male' or 'female'. An option 'prefer not to disclose' is helpful. It should also be made clear on forms requesting this information what the intended use is, as this may affect how some trans people respond. For further information see section 2.4.

Identification

A full gender recognition certificate (GRC) gives a trans person the means to obtain a new birth certificate, but a trans person can get other official identification that is reflective of their preferred gender without a full GRC, including a passport and driving licence. Bank account details can also be changed without a full GRC. To obtain official documentation that is reflective of their preferred gender, a trans person without a full GRC is required to provide a doctor's letter stating their intention to transition permanently to their preferred gender and, if appropriate, a statutory declaration of name change.

2 Promoting trans equality within a higher education institution

As not all trans people will hold a birth certificate that is reflective of their preferred gender, where HEIs require official confirmation of a person's identity, staff and students should be given the option of providing more than one type of official identification, for example a driving licence, passport or birth certificate. If a trans person is transitioning at the HEI, following their statement of intent to transition, their staff or student record should be changed at a mutually agreed time to reflect their preferred gender and name. Please note that, in some circumstances, specific criteria apply – particularly for degree certificates (see above) and pensions (see below). As not all trans people will be under medical supervision, ECU does not recommend that they are asked to provide a doctor's letter.

During transition, a trans person may use more than one legal identity, which is perfectly acceptable as long as they do not use their different identities for fraudulent purposes.

Insurance

Institutions registering staff for corporate insurance and benefits policies need to check with their underwriters if they are required to provide information about employees' trans status. Some insurers automatically invalidate a policy if the trans status of a person without a gender recognition certificate is not disclosed. The institution should obtain written consent from the staff member concerned before disclosing the information. If the institution is unaware of the trans status of its staff, the obligation to disclose passes to individual staff members, who could also be held liable in the event of an accident for which no valid insurance cover exists.

Name changes

Trans people can easily change their legal name by making a statutory declaration of name change. However, some trans people choose not to change their legal name immediately, or have no intention of changing their name. Young trans people, in particular, may use a name that differs from their legal name, such as a nickname or a shortened version of their full name. It is not unusual for tutors or managers to ask a new student or a new member of staff if they prefer to use a shortened version of their name. If possible, it would be preferable for this information to be relayed to the tutor or manager, so that the legal name is not used in error.

If a trans student changes the name under which they are registered at the institution, they should do likewise with the student loans company, their local

2 Promoting trans equality within a higher education institution

authority, any sponsor, and their bank to ensure payments are not delayed. A trans member of staff will need to ensure they have notified their bank, the institution's pension scheme, and so forth.

Pensions

Everyone born since April 1955 receives their state pension at 65; however, women born before 1950 can claim their state pension when they reach 60. Trans people without a gender recognition certificate (GRC) are treated as the sex recorded at birth for the payment of state pensions. If a person has not obtained a full GRC and retires earlier or later than other staff of the same gender because their preferred gender has not been legally recognised, the institution should keep the reasons for this confidential. Trans women who gain a GRC after turning 60 can have their state pension backdated to their 60th birthday.

Almost all occupational pension schemes offer both a death-in-service lump sum and a dependent's benefit. The death-in-service benefit should be able to be paid to anyone, without proof of dependence required. It is therefore important that trans people review their expression of wish forms (or equivalent, depending on the scheme) which, in the event of death, inform the trustees of the member's wishes. These forms are confidential, and are kept unopened unless the person dies. The definition of 'dependent' will vary from scheme to scheme according to its rules. A person who has had their marriage annulled or civil partnership dissolved to receive a full GRC will need to review their pension arrangements.

It is good practice for the institution to agree with the individual the date of change for pension purposes. HM Revenue & Customs will be informed that a full GRC has been issued, either by the gender recognition panel or by the trans person. This will lead to a change in national insurance records to reflect the person's acquired gender. Private pension firms will require legal evidence of gender as well as name change, and staff should be asked to provide a new birth certificate and, if appropriate, a statutory declaration of name change. Name changes to national insurance and private pension records can be made with a statutory declaration of name change.

Records

No records should be changed without the permission of the staff member or student concerned. If an individual discloses their status as a trans person, or gives notification of their intent to transition during their employment or education,

2 Promoting trans equality within a higher education institution

the institution will need to agree with them the date from which their gender is changed on all personnel/student records and public references, such as identification passes, library cards, contact details, email addresses, formal records, website references, payroll details and so on.

Particular consideration should be given to agreeing the date from which a student applicant's name and gender will change at the pre-enrolment stage, ensuring that UCAS or other application forms are amended. This will enable all subsequent identification to be produced accordingly. The applicant will need to notify the student loans company and other funding bodies to ensure payment and enrolment records match.

Changes to academic biographies should be discussed with the individual. The institution should issue a letter to the individual confirming the changes to be made and the date of change, as well as the name of a person to contact if they experience any difficulties in the course of their contact with the institution.

Subject to the agreement of the individual, and with the exception of degree certificates and pension schemes (see above), a written notification of intent to transition is sufficient for the gender and name on staff and student personnel and academic records to be changed. This is necessary to enable the person to go about their daily life as a staff member or student without their birth gender being known. Asking a trans person to provide medical evidence of transition before changing their name and gender on records is not recommended, as not all trans people opt for medical assistance.

It is very important to ensure a trans person's file reflects their current name and gender. Any material that needs to be kept that is related to the person's trans status, such as records of absence for medical assistance, birth certificate and documentation of name change, should be placed in a sealed envelope and attached to a new file with instructions such as, 'Confidential: personnel manager only' or 'Confidential: head of student services only'. The personnel manager or head of student services should allow staff to view the information only if they require it to perform their specific duties and with the permission of the person concerned.

When a trans person receives a gender recognition certificate, they have the right to request that all references to their former name and gender are removed from old records to ensure their former identity is not revealed. All records held on

2 Promoting trans equality within a higher education institution

paper file must be found and replaced with new records, and relevant information transferred to a new cover. For example, a person's old birth certificate will need to be replaced with their new one; if the person has changed their name, their original offer letter will need to be replaced with an offer letter in their new name. Nothing should remain on the file that would disclose to a third person that a change has occurred.

In order for these changes to take place, it may be necessary to discuss with others in the institution the fact that a person is transitioning. However, it is essential that the individual grants permission before their status is discussed with others.

Recruitment

Recruitment procedures should be checked carefully. If formal documents are required before commencing employment or enrolment, institutions should emphasise their confidentiality policy when asking for a birth certificate. If a person has not yet received a gender recognition certificate, or has not yet been issued with new identification, the birth certificate will clearly show that the person was born with a different name (and gender). The same situation would arise if another country, not having the same legislative provision as the UK, has issued a passport. A P60 or P45 can be amended to reflect the new name and is therefore more discreet. Wherever possible, institutions should be flexible about the form of identification they ask for.

It should not be expected that job applicants and interviewees will necessarily wish to disclose trans status, as many consider it a private matter. It is not a question that should ever be asked at interview – just as, for example, a woman should not be asked whether she plans to have children.

References

References for current or former students or staff who have transitioned must make no reference to the person's former names or gender, and must use the appropriate pronoun. Failure to do so without the individual's consent would be a breach of the Data Protection and the Gender Recognition Acts. Institutions that receive a reference for someone who has previously transitioned, which refers to them by a previous name, should treat that information as confidential.

2 Promoting trans equality within a higher education institution

Single-sex facilities

A trans person should have access to 'men-only' and 'women-only' areas – such as changing rooms and toilets – according to the gender in which they present. This may mean that a person changes the facilities they use at the point when they start to live in their acquired gender. In some situations, it may be helpful to explain the situation to work colleagues or other students who use the facilities; however, this should only be done following full consultation with the trans person, and if the trans person concerned wants this conversation to take place. It is not acceptable to restrict a trans person to using disabled toilets or other unisex facilities. For a range of equality-related reasons, it would be considered good practice for an institution to consider the provision of private cubicles within existing changing facilities where they are not currently provided.

Sports

The Gender Recognition Act recognises that, in certain circumstances, it may be appropriate to restrict trans people from participating in competitive sports in their acquired gender. This is to ensure fair competition and the safety of other competitors as well as the trans person. However, the criteria within the Act for restricting trans competitors does not apply to all sports, and guidance from the Department for Culture, Media and Sport (DCMS, 2005) makes it clear that a trans person should be given the same access to sports clubs as a non-trans person. In addition, single-sex clubs should admit trans members, provided they can show identification in the appropriate gender.

If an HEI or students' union is unsure whether it is appropriate to allow a trans person to compete in a sporting event, ECU recommends that the appropriate governing body is consulted (for higher education competitive sports, contact British Universities & Colleges Sport, www.bucs.org.uk). Consideration should be given as to whether it is necessary to exclude the trans person on the basis of fair competition or safety. Sports governing bodies should have a policy for competition that covers trans people. HEIs and students' unions should be aware that the restrictions on competition apply only to trans competitors, they do not apply to trans referees, coaches or club employees.

Support groups

Lesbian, gay and bisexual (LGB) support or action groups are often extended to include trans staff and students, although this is not always ideal, as trans people may have different needs. Gender identity issues and support for trans staff and

2 Promoting trans equality within a higher education institution

students may alternatively be covered by a gender equality group. These provisions can help ensure that staff and students feel adequately supported, with the result that they are less likely to leave the institution.

Other ways in which institutions can offer additional support to trans staff and students include:

- = using freshers' week to hold a specific event on gender identity issues alongside other more general orientation events
- = setting up a scheme for visiting trans mentors to visit HEIs to offer support to both trans and non-trans students and staff on the issues involved
- = setting up an inter-institution buddying system to allow trans people in higher education to correspond with each other

2.3 Bullying, harassment and discrimination against trans people

Bullying, harassment and discrimination are unlawful and should not be tolerated in any institution. Policies should protect the rights of trans people to dignity at work and in their studies. Some indicative examples of unlawful direct discrimination include:

- = refusing to promote a member of staff who is trans
- = refusing to support a member of staff or a student who is trans
- = deliberately excluding a trans person from any work or work-related activity on the grounds of their gender identity
- = dismissal of a trans person for reasons connected to their transition
- = verbally or physically threatening a trans person
- = spreading malicious gossip about that person
- = refusing to associate with or ignoring someone because they are a trans person
- = refusing to address the person in their acquired gender or to use their new name
- = sexual harassment of a trans person
- = revealing the trans status of a person to others, either by disclosing information to individuals or groups – in other words, 'outing' someone
- = not respecting a person's transition because the institution thinks the individual has not transitioned sufficiently to warrant change – institutions will not be able to claim ignorance or confusion about trans issues
- = passing judgment on how convincing a trans person is in their acquired gender

2 Promoting trans equality within a higher education institution

- = indefinitely refusing to allow a trans person to use single-sex facilities appropriate to their gender after a reasonable transition period
- = treating a trans person less favourably than others in regard to sickness or other absences
- = refusing to acknowledge the rights of a trans person and failing to acknowledge that a transition has occurred

Steps that can be taken to prevent harassment include:

- = creating effective and well communicated policies to promote gender equality that explicitly cover gender identity
- = training all staff and managers on the policies and their responsibilities under them
- = making harassment a disciplinary offence
- = monitoring the policies and their impact regularly
- = developing clear procedures for investigating complaints
- = training staff involved in investigating complaints
- = ensuring subcontractors are aware of the institution's policies to promote gender equality and their obligations under them
- = working in partnership with the local police to ensure hate crimes are reported

2.4 Monitoring trans staff and students

There is no legal obligation to monitor gender identity for either staff or students, and very few institutions do so. It is worth noting that the data returns institutions make to the Higher Education Statistics Agency (HESA) currently include a gender category 'indeterminate'; this does not refer to trans people, but to intersex people. This also does not prevent institutions from monitoring gender identity more broadly. For more information about the HESA category, see www.ecu.ac.uk/your-questions/what-doe-the-hesa-category-indeterminate-mean.

A decision to monitor gender identity should be taken in consultation with trans staff and student groups as well as trade unions and students' unions. If most trans people are opposed to monitoring, this may suggest that more work needs to be done to make equality policies effective and to raise levels of confidence.

Monitoring can help institutions to:

- = learn more about the needs of trans staff and students

2 Promoting trans equality within a higher education institution

- = analyse patterns emerging in relation to discipline and grievance issues
- = support staff and students who want to be 'out'
- = avoid giving the impression that some equality issues are more important than others

If, following consultation, an institution does decide to monitor gender identity, it is recommended that the following steps are taken.

- = Ensure the institution's policies to promote gender equality expressly cover trans staff and students, making it clear that monitoring is taking place within a wider framework.
- = Be clear about why the information is being collected and how it will be used – collect only information that will be used.
- = Be clear that all monitoring questions relating to gender identity are optional.
- = Ensure the information remains anonymous, building in additional safeguards where necessary.

Questions about gender identity should be free-standing – they should not form part of questions on sexual orientation, gender or sex. Gender identity has nothing to do with who a person is attracted to. Nor is it appropriate to offer a choice between identifying as male, female or trans. Most trans people do not consider themselves to be a 'third sex' and may take offence at this suggestion. People are more likely to respond positively if the form uses language they are comfortable with. Questions about language could form part of the preparatory consultation with trans staff and student groups. Descriptive questions may be the most appropriate, for example:

*Is your gender identity the same as the gender you were assigned at birth?
Yes/No*

*Do you live and work full-time in a gender role different from that assigned at birth?
Yes/No*

*Do you feel able to discuss your gender identity with colleagues at work?
Yes/No/With some people, but not all*

Low rates of return are quite likely when monitoring is first introduced. There may also be some 'spoiled' forms or even forms with abusive comments on them. If this does not improve over time, the institution might want to review its policies to promote gender equality and their implementation. But if, in time, the institution

2 Promoting trans equality within a higher education institution

can demonstrate that it is really committed to building a trans-friendly workplace and learning environment, data will improve.

Institutions must explain how the information will be collected, who will process it, how it will be stored, and how it will be reported. If forms are to be posted back, they should go to one central contact, such as the head of human resources, not to local human resources leads. Sometimes monitoring can be conducted through a neutral organisation under a guarantee of anonymity. This can help to address concerns about confidentiality and therefore increase the response rate.

The Data Protection Act is unlikely to apply if the survey is anonymous and the data cannot be linked to individuals. If the information is not anonymous, the act regards information on gender identity as 'sensitive personal data', which can be stored only if the individual gives their consent. Provided that respondents are reminded of their right to refuse to answer questions, a box can be included on the form for respondents to tick if they grant their permission for data to be stored.

Monitoring data should not be stored in personal files, but in a secure system with restricted access to ensure confidentiality. A good check on confidentiality is to map the flow of information from the person who supplies it to the final reporting stage: the number of people who will work directly on the data, and the number of other people who will have access to it. There should be as few steps in this chain as possible.

When reporting monitoring data, institutions must ensure trans staff and students are not identifiable; data should not be linked to, for example, specific courses, departments, grades or job titles.

3 Responsibilities when supporting a person who is transitioning

3.1 Preparing and planning for a staff member's or student's transition

An institution should provide guidelines outlining the processes by which a student or employee will be supported during and after transition. Student services or their equivalent should discuss a student's transition with them, and agree an action plan with a timescale. Student services can then coordinate actions with other departments. Similarly, human resources departments should discuss an employee's transition with them and agree an action plan with a timescale.

A member of staff who has been diagnosed with gender dysphoria may think it is best to leave their present employment, transition, and then start their career elsewhere. Similarly, a student diagnosed with gender dysphoria may consider dropping their studies and doing something else. If institutions include trans staff and students in their policies to promote gender equality, and implement these, this will be less likely to happen. Gender dysphoria is a highly personal and complex condition – it requires confidence and an unequivocal faith in an institution's commitment to equality for someone to feel comfortable when transitioning.

An employee might wish to discuss their situation with their trade union, which should have a policy covering gender identity issues. A student could discuss their situation with their personal tutor, course director or student services representative in the first instance. A trans person may wish to be proactive in helping the institution establish good working practices, and this should be encouraged and supported.

A policy on trans issues should encourage both employees and students who wish to transition to inform their institution as soon as possible. An employee may do this via the human resources department or, in some institutions, the equality and diversity team, or they may raise the matter directly with their manager. Likewise, a student should be able to discuss the implications of their transition with student services, or directly with their tutor or course director. The institution may want to request that trans staff and students give three months' notice before they start to live in their preferred gender, to give the institution time to prepare. However, it is

good practice to be flexible about such requirements, as individual circumstances will vary.

In most circumstances, a member of staff who wishes to transition should write a letter to their manager, or to the head of human resources, to notify them of their intent to transition. The equality and diversity team, or a trade union representative, may also be able to provide advice on how a staff member can notify their employer of their intent to transition.

A student who intends to transition, or is transitioning, should in the first instance contact the student services department which, with the student's permission, can coordinate the process of transition with the academic and support departments. The student's personal tutor or programme director could also be contacted, particularly where the student is in a professional programme and is on, or due to go on, placements. Students wishing to transition should also be asked to notify the institution of their intent to transition formally, in writing.

The primary recipient of the letter, or the member of staff approached, should organise a meeting with the person and offer reassurances that the institution will support them during their transition. The trans member of staff, or student, may wish to be accompanied at the meeting by their trade union or students' union representative, or by a friend.

At the meeting, the person should be informed about the support available within the institution, they should be asked to let the institution know of any dates that have been set (for example, for appointments, the start of their real-life experience) and a decision should be taken as to whether a larger meeting is needed and who should be invited. Suitable people to invite could include one or two of the following: the person's manager or head of department, a member of the human resources team, a member of the equality and diversity team, a trade union or students' union representative, and – if the student is required to undertake a placement as part of their programme – a programme placement provider representative. Before this meeting convenes, and with the trans person's permission, it might be helpful to send invitees information about gender identity issues (for example, this publication), and a covering note explaining the person's intention. It is essential that this invitation includes a clear statement of confidentiality that emphasises the importance of not discussing the person's transition with any other member of the institution.

3 Responsibilities when supporting a person who is transitioning

It will be necessary to agree an action plan, including timescales, to ensure appropriate steps are taken during the person's transition. This should cover:

- = the dates of appointments that the person has with doctors and specialists
- = the date when the person intends to commence any real-life experience
- = when to inform their department or division
- = if and when the person intends to start hormone therapy and/or undergo surgery

The timetable will enable institutions to ascertain in advance any necessary arrangements for time off work or study, and when changes to records are likely to be required.

The action plan and timescales will need to be reviewed periodically with the staff member or student concerned. Particular attention will need to be given to students in programmes of study that require them to undertake course placements, or to study at a particular rate to qualify for funding or meet course requirements.

The action plan should be confidential, and discussion should take place to agree where copies should be kept and who should have access. The plan should include:

- = the expected timescale of any medical and surgical procedures
- = the expected point or phase of a change of name, personal details and gender, and the steps that need to be taken to prepare for that point or phase (see section 2.4)
- = what time off the person will need for medical appointments or procedures, and/or possible side-effects of any medication
- = ways to minimise any disruption if the student is on a professional programme with attendance requirements, for example, distance learning, intensive learning before/after medical procedures, adjustments to deadlines and assessments, and online learning
- = whether the member of staff wants to stay in their current position or might wish to consider redeployment
- = whether a student wants to continue their programme of study, defer for a set amount of time, or come to some other arrangement, such as part-time or distance learning

3 Responsibilities when supporting a person who is transitioning

- = whether the member of staff or student wishes to inform line managers, colleagues and/or fellow students in person, or would prefer this to be done for them
- = what amendments will be required to records and systems
- = whether a trans person is adequately covered by existing policies on issues such as confidentiality, harassment and insurance, and if not, how these will be amended
- = whether training or briefing of colleagues, fellow students or service users will be necessary, at what point, and who will carry this out

The law recognises that someone under medical supervision who is transitioning may require substantial periods of time off work to undergo medical procedures. A trans person under medical supervision who has time off work relating to their transition has the right to be treated in the same way as someone who is absent from work for reasons of sickness or injury. The institution should also be aware that the possible side-effects of medication may adversely affect work performance, and trans people may need reduced hours or duties for a temporary period when they return to work following surgery.

Occupational health and/or counselling services should be available for the person to consult in confidence. Although counsellors may not have specialist expertise, they can provide emotional support at what can be a distressing and confusing period for the trans person.

3.2 Managing the reactions of colleagues and fellow students

As people transition, the process itself may present challenges for other staff and students who have fixed notions of gender. A member of staff or a student who is transitioning may face a broad range of challenges in their work or learning environment. Institutions that are supporting trans staff and students and managing the reactions of their colleagues or fellow students may initially have no idea how to respond to these challenges.

The trans person may want to tell their colleagues or fellow students about their impending transition individually. However, in agreement with the person, it may be useful to arrange a meeting with their colleagues or fellow students. If practical, invitations should be sent to anyone the person works with or interacts with frequently at the institution, in student accommodation or on programme

3 Responsibilities when supporting a person who is transitioning

placement. It is best not to discuss transition via email, although a letter (and this publication) could be circulated at the meeting. The individual should be free to choose whether they make an announcement themselves, or whether it is made for them by a chosen representative. It is important that a senior member of staff within the student's or staff member's department or faculty, and in the case of students, their residence, is seen to be supportive. It would be good practice for the senior member of staff to make it clear that the person who is transitioning has the full support of the institution. The senior member of staff should also explain and reiterate the institution's commitment to equality, and its policy on bullying and harassment. The senior member of staff should emphasise that, from that day or from another predetermined day onwards, as appropriate, the person will have changed gender and should be addressed by their new name and using the appropriate pronoun. The content of any meeting should be discussed in full with the trans person in advance.

There should be an opportunity for other members of staff or students to ask questions, either of the person hosting the meeting or, if they are comfortable, the person concerned. It may be helpful to circulate some basic ground rules on showing respect for trans people; some ideas are given in appendix C.

Training for colleagues and fellow students may be helpful if staff or students are transitioning. This should be conducted in such a way as to ensure participants are able to raise issues and concerns of their own; it is of paramount importance that they know what is expected of them.

When developing training programmes, especially when doing so in response to a member of staff or student transitioning, it is good practice to involve any trans staff or students in the planning and design phases, should they choose to be involved. Keep in mind that some trans staff or students may choose not to be publicly identified; when consulting, confidentiality is vital until they indicate that they are comfortable being 'out'.

3.3 Supporting changes in gender presentation

Before a person starts to present in their preferred gender, it is important that the institution plans what will happen with the staff member or student (see section 2.2). When a person starts to present in their preferred gender, relevant

3 Responsibilities when supporting a person who is transitioning

managers, departments and divisions should ensure everything is in place to avoid any contradictory information.

- = Staff lists, student lists, class lists, organisational charts, databases and so on should all be updated and circulated – omission or contradiction can be embarrassing.
- = A trans staff member should receive new identification and, if relevant, a new door sign. A trans student should receive a new identification card, name badges, library card, students' union card, etc. The checklist in appendix D may be helpful.
- = If there are any informal social groups, it is important that these are inclusive. Work and study will return to normal quickly, but other students and staff may be interested and curious about the person's new identity.
- = If the student is living in accommodation that is owned or managed by the institution, and requests to be relocated to more suitable accommodation, this should occur on an agreed date during the transition process.
- = The students' union should ensure all records of the student are changed and that membership of gender-specific sports clubs and societies is handled with care and consideration.

In the early stages of transition, a trans person may not permanently present in their preferred gender, as they may not feel able to do so until, for example, hormone therapy starts to alter their body; or they may fear, or be subject to, discrimination. It can take several years to transition fully to the opposite gender, and during this time the trans person may experience extensive physical changes. The full transition will not be instantaneous, so it may be necessary to update photographic identification throughout this period; in some cases the person may require identification in their former as well as their new gender.

In rare cases, there may be the possibility of media intrusion, particularly if the person is working in a high-profile role. If the institution or the trans person anticipates that this may happen, it is helpful to have a prepared media strategy in place to respond to enquiries about an individual. Any such strategy should be developed with the individual concerned. To protect their identity, their name should not be revealed, nor their post if they are a member of staff.

References and resources

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In addition to the materials listed above, the 2008 version of this guidance, on which the 2010 version is based, drew upon materials from:

- = Department of Health
- = Gender Identity Research and Education Society
- = Press for Change
- = University of Hull

Legislation

Data Protection Act 1998

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Disability Discrimination Act 1995

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Equality Act 2010

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Sex Discrimination Act 1975

www.equalityhumanrights.com/uploaded_files/sex_discrimination_act_1975.pdf

Sex Discrimination (Gender Reassignment) Regulations 1999

www.opsi.gov.uk/si/si1999/19991102.htm

For more detail on legislation, see **section 1.4**.

Appendix A: suggested policy statement on trans equality

This format is based on the *Joint agreement on guidelines for transgender equality in employment in further education colleges* (Association of Colleges et al, 2005).

[Institution name] recognises that there can be differences between physical sex and gender identity/expression. *[Institution name]* will at no time discriminate against people on the grounds of transvestism, transsexualism, intersex conditions or any process of gender reassignment, begun or complete. Where this policy refers to 'trans people', it has in mind people living with any of these identities. When it refers to 'gender identity', it covers both the fixed identity of people living in the gender of their birth and the more fluid identities of many trans people.

[Institution name] celebrates and values the diversity of its workforce, and believes that *[Institution name]* will benefit from employing trans people at all levels of responsibility, thus hoping to provide role models for students who identify as trans. *[Institution name]* will treat all employees and students with respect, and seek to provide a positive working and learning environment free from discrimination, harassment or victimisation.

[Institution name] undertakes the following.

- = Students will not be denied access to courses, progression to other courses, or fair and equal treatment while on courses because of their gender identity.
- = The curriculum will be checked to ensure that it does not rely on or reinforce stereotypical assumptions about trans people, and that it does not contain transphobic material.
- = *[Institution name]* will respect the confidentiality of all trans staff and students and will not reveal information without the prior agreement of the individual.
- = Staff will not be excluded from employment or promotion because of their gender identity.
- = Transphobic abuse, harassment or bullying (name-calling/derogatory jokes, unacceptable or unwanted behaviour, intrusive questions) is a serious disciplinary offence and will be dealt with under the appropriate procedure *[HEI to provide link to procedure/s]*.

- = Transphobic propaganda, in the form of written materials, graffiti, music or speeches, will not be tolerated. *[Institution name]* undertakes to remove any such propaganda whenever it appears on the premises.
- = *[Institution name]* will provide a supportive environment for staff and students who wish their trans status to be known. However, it is the right of the individual to choose whether they wish to be open about their gender identity. To 'out' someone, whether staff or student, without their permission is a form of harassment and, possibly, a criminal offence. *[Institution name]* will include gender identity issues in equality training.
- = *[Institution name]* welcomes, and will provide, appropriate facilities for trans student and staff groups.
- = Having consulted with trans staff and students and the trans community, *[Institution name]* will include gender identity in internal attitudinal surveys, and when monitoring complaints of harassment.
- = In providing accommodation for students, any concerns or issues raised by trans students will be handled by the accommodation office and will be treated fairly and in line with *[institution name]*'s obligations under equality law.
- = Staff and students undergoing medical and surgical procedures related to gender reassignment will receive positive support from *[Institution name]* to meet their particular needs during this period.
- = *[Institution name]* recognises that trans staff and students come from diverse backgrounds, and will strive to ensure they do not face discrimination on the grounds of their gender identity or in relation to other aspects of their identity, for example, their race, age, religion, disability or sexual orientation. In addition, assumptions will not be made about the sex of partners of trans staff or students.
- = *[Institution name]* will ensure that its environment, in terms of its pictures, images, publicity materials and literature, reflects the diversity of its staff and students.

Appendix B: the transition process in a higher education setting

The chart below provides an overview of a typical transition. Each individual's situation will vary depending on a range of factors, including whether or not a person opts for medical procedures, and whether they are receiving medical assistance privately or on the NHS.

A person identifies that their physical gender is not their actual gender
The person is diagnosed with gender dysphoria
The person informs their institution that they want to transition to their preferred gender and will commence a real-life experience
After at least three months, the person begins hormone therapy
At the person's request, the institution updates its records to reflect any name change and their new gender
A new staff or student file is created and any documents revealing their former name and gender that must be kept (for example, pension records) are marked 'confidential'
If the person is a student and they have changed their name, they are informed that they must legally change their name before a degree certificate can be issued in their new name
After at least 12 months, the person may undergo genital surgery
After two years of living in their chosen gender, whether or not they have undergone surgery, the person applies for a gender recognition certificate
A gender recognition certificate is awarded and the person is issued with a new birth certificate
The person is now legally recognised in their chosen gender – all documents and references that have not already been changed must now be changed
If the person is a staff member who is a member of the institution's pension scheme, they must send their new birth certificate to the appropriate person to ensure their gender is changed on pension records

Appendix C: trans respect guidelines for staff and students

The following informal guidelines on how to treat people who are transitioning may be helpful for a trans person's colleagues and fellow students.

- = Think of the person as being the gender that they want you to think of them as.
- = Use the name and pronoun that the person asks you to. If you aren't sure what the right pronoun is, ask. If you make a mistake with pronouns, correct yourself and move on. Don't make a big deal out of it.
- = Respect people's privacy. Do not ask what their 'real' or 'birth' name is. Trans people are often sensitive about revealing information about their past, especially if they think it might affect how they are perceived in the present.
- = Similarly, respect their privacy. Do not tell others about a person's trans status. If documents have to be kept that have the person's old name and gender on them, keep them confidential.
- = Respect people's boundaries. If you feel it is appropriate to ask a personal question, first ask if it is ok to do so. Personal questions include anything to do with one's sex life, anatomy (not just genitalia) and relationship status – past, present or future. Questions such as 'Are you on hormones?' can be considered personal.
- = Listen to the person, and ask how they want to be treated and referred to.

Appendix D: supporting a staff member or student during transition

Timetable	
1	<p>What is the likely timetable for transition?</p> <p>Consider, for example, the dates for:</p> <ul style="list-style-type: none"> = name change = use of facilities (toilets, changing rooms) = change of records
Name	
2	<p>Which identification cards/name badges will need to be changed?</p> <p>Consider, for example:</p> <ul style="list-style-type: none"> = university ID card = library card = students' union card = National Union of Students card = club and society cards = volunteer/mentor ID badges = trade union membership badge = professional/learned body membership cards = fitness centre/gym membership card = accommodation access card = catering/food meal card = placement ID cards = course representative card

Appendix D: supporting a staff member or student during transition

3	<p>Which documents and materials need to be replaced or altered?</p> <p>Consider, for example:</p> <ul style="list-style-type: none"> = online records, e-portfolio/record of achievements, academic biographies = all student/staff records and databases, enrolment forms, finance records = programme and module lists = personal tutor records = welfare/disability/counselling records = volunteering and mentoring records = course representative posters and contact details = committee minutes and records, for example, boards of study or academic boards = certificates, for example, council tax exemption, training attendance, degree = club and society membership records = payroll (and banking details) = pension, death in service and dependents' benefits = insurance policies = student loans company/local education authority 	
Process		
4	<p>Should the following people be informed? If so how?</p> <ul style="list-style-type: none"> = programme teams = students and colleagues = support departments (finance, student records, accommodation, etc) = work placement providers, volunteer placements = committee secretaries = club and society members 	
5	<p>If the student/staff member is, or will be, undergoing surgery, do they know when this will be?</p>	

Appendix D: supporting a staff member or student during transition

6	If the student/staff member requires time off for surgery and recovery, what processes/support/adjustments are needed to ensure they remain on their programme of study/in employment, or can return when they have recovered?	
7	Are there any professional or attendance requirements that may be affected by the person's absence for medical assistance?	
	Consider how students will be supported to ensure they can complete their programme of study on time	
Training		
8	Will there be a need to arrange any training for managers, colleagues or fellow students?	
9	Who should be trained?	
	Consider: cleaners, catering staff, academic staff, finance staff, students in the same tutorial groups	
10	Who will deliver this training?	
	Equality and diversity team, trans people?	
11	What will the training cover?	
12	Will the trans student/staff member want to be involved to share their experience and expectations?	
Genuine occupational qualification (GOQ)		
13	Are there any GOQ requirements during the student's programme of study or staff member's work?	
	Some roles may be more likely than others to include GOQ requirements, such as roles within: counselling, social care, NHS, charities, schools	

Appendix D: supporting a staff member or student during transition

14	Are there any GOQ requirements on volunteer placements or work-based learning?	
	Some roles may be more likely than others to include GOQ requirements, such as roles within: women's refuges, rape crisis centres	
Ceremonies		
15	During awards ceremonies, what name will be used if a person's name has not been legally changed?	
16	During a degree ceremony, what name will be used if a person's name has not been legally changed?	
	Consider: = on the certificate = in ceremony programmes = when read out	
Discrimination		
17	Are there clear guidelines and processes to deal with direct or indirect discrimination, victimisation or harassment of a trans student or member of staff?	
18	Are there clear processes to deal with discrimination on work placements?	
19	How is the student or member of staff made aware of these processes?	
20	How are colleagues, other students, and work placement providers and contractors made aware of their responsibilities?	

Appendix E: indicators of successful policies

Under the Gender Equality Duty, HEIs are required to assess the impact of their policies on gender equality. Whether or not an institution currently monitors trans staff and students, the following indicators can be used by HEIs to review their policy provision and the effectiveness of existing policies for trans staff and students.

- = Trans students and employees feel supported.
- = Employees undergoing transition are retained as valued members of staff.
- = Students undergoing transition are able to complete their programme of study.
- = Barriers to the recruitment and retention of trans staff and students have been identified and removed.
- = A clear and workable policy is in place for dealing with harassment of trans staff and students.
- = Support mechanisms exist to protect the health and welfare of trans staff and students.
- = Groups providing a voice for trans staff and students are established.
- = There is evidence that the institution promotes and maintains a culture of respect for the dignity of individuals.
- = There are appropriate protocols for the management of sensitive and confidential information about a person's trans status.
- = Practical matters relating to transition, such as access to changing and toilet facilities, are resolved quickly and respectfully.
- = Curriculum provision is not based on gender stereotypical assumptions or imagery.

Appendix F: key contacts

The Beaumont Society is a support network that promotes better understanding of the conditions of transgender, transvestism and gender dysphoria.

www.beaumontsociety.org.uk

Depend is an organisation that offers free, confidential and non-judgmental advice, information and support to all family members, partners, spouses and friends of trans people. www.depend.org.uk

Equality and Human Rights Commission is a statutory body with responsibility for protecting, enforcing and promoting equality across nine protected characteristics – age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, and sexual orientation. www.equalityhumanrights.com

Forum on Sexual Orientation and Gender Identity Equality in Post-School Education was established in April 2007 to promote equality and good practice in employment and the provision of post-school education, with a specific focus on sexual orientation and gender identity, or transgender, equality issues.

www.aoc.co.uk/en/Policy_and_Advisory_Work/employment/representation/forum_so_and_gi_equality.cfm

Gender Identity Research and Education Society initiates, promotes and supports research, particularly to address the needs of people who have a strong and ongoing desire to live and be accepted in the gender in which they identify, although different from that assigned at birth. www.gires.org.uk

The Gender Trust is recognised as an authoritative centre for professional people who encounter gender identity-related issues in the course of their work. In particular, this group includes employers, human resources officers, health workers and information services. National helpline: 0845 231 0505.

www.gendertrust.org.uk

Mermaids UK provides support and information for children and teenagers who are trying to cope with gender identity issues, and for their families and carers.

www.mermaidsuk.org.uk

Appendix F: key contacts

Press for Change is a political lobbying and educational organisation that campaigns to achieve equal civil rights and liberties for all transgender people in the UK through legislation and social change. www.pfc.org.uk

Transgender Zone is an online resource that covers all aspects of transgender issues, including a section specifically for female-to-male trans people. www.transgenderzone.com

Although every effort is made to ensure the information contained within this publication is accurate and up to date, ECU cannot be held responsible for any errors or omissions. The information is not a substitute for legal advice, and should you require more specific advice you should consult an appropriately qualified professional adviser.



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Equality Challenge Unit supports the higher education sector to realise the potential of all staff and students whatever their race, gender, disability, sexual orientation, religion and belief, or age, to the benefit of those individuals, higher education institutions and society.

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