

# Policy for Supporting Transgender Persons

October 2017

## DOCUMENT PROFILE

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## 1. INTRODUCTION

### 1.1 Rationale

The Jersey Health and Social Services Department (HSSD) is committed to equality for all communities and to providing services which are accessible, appropriate and that recognise the diversity of people, their needs and choices.

This Policy sets out HSSD's roles and responsibilities as a service provider for and employer of Trans people to help the organisation uphold its responsibility to protect the rights of Trans people as outlined in legislation and best practice.

### 1.2 Scope

This Policy applies across HSSD to all health and social care professionals and staff operating under the auspices of HSSD. This includes locums, contractors, temporary staff, students, service user representatives, volunteers and partner agency staff.

Staff will be expected to comply with this Policy at all times and positively challenge colleagues and users of HSSD services who act in a manner that breaches the legal aspects of HSSD's responsibilities. HSSD's legal duties as a health and social care service provider and employer are outlined in Appendix A – Relevant Legislation.

### 1.3 Principles

To deliver a user-led service, HSSD must ensure that services and care delivery recognise the needs of each individual service user. HSSD recognises that Transgender (Trans) people are entitled to fair and equal access to all HSSD services and that a person's gender status will not exclude them from the high standards of care expected from HSSD.

HSSD further recognises that Transgender service users and staff may experience discrimination. HSSD does not tolerate and is committed to eliminating discrimination, harassment and victimisation, direct or indirect, against any person, including Trans people.

## 2. POLICY PURPOSE

2.1 HSSD is committed to ensuring equality of opportunity for Trans service users and Trans employees. All Trans service users and employees have legal rights that are outlined in Appendix A – Relevant Legislation. The fundamental directive of this Policy is to ensure that Trans people are treated in their chosen gender at all times.

2.2 The purpose of the Policy for Supporting Transgender Persons is to:

- ensure Trans people using or visiting HSSD services can do so without fear of prejudice, discrimination or harassment

- provide management and staff with guidance on the appropriate care and support for Trans people and their families and the legal basis for this
- provide information to Trans people regarding their rights to equality of access of service and employment opportunities
- ensure that employees who identify as Trans or gender variant are treated with fairness and support in their recruitment and development
- support staff to contribute to culture change within HSSD.

### **3. PROCEDURE**

#### **3.1 Legal and Best Practice Obligations**

##### **3.1.1 Legislation**

HSSD is required to abide by the provisions of the following legislation:

- Discrimination (Jersey) Law 2013 (as amended)
- Gender Recognition (Jersey) Law 2010 (GRJL)
- Gender Recognition (Approved Jurisdictions) (Jersey) Order 2010
- Gender Recognition (Disclosure of Information) (Jersey) Order 2010

Further details are in Appendix A – Relevant Legislation.

##### **3.1.2 Best Practice**

The duty of best practice requires HSSD to take action on the most significant gender equality issues within each function. The promotion of equal opportunities between men and women requires HSSD to acknowledge that the two groups do not start from an equal position and that identical treatment is not always appropriate. Under the duty, HSSD also has an obligation to actively promote equality and eliminate discrimination and harassment towards Trans service users and staff.

In general terms, HSSD is required to ensure that clinical and social care responses are user-centred, respectful and flexible towards all Trans people.

#### **3.2 Duties**

##### **3.2.1 Chief Executive Officer and Corporate Management Executive Directors**

The Chief Executive Officer is responsible with the Corporate Management Executive Directors for ensuring that HSSD is compliant with equality and diversity legislation and the promotion of equal treatment and opportunities for those who share a protected characteristic and those who do not.

### 3.2.2 Human Resources

The Human Resources Department is responsible for:

- advising Line Managers on equality and diversity particularly when recruiting or promoting employees
- providing advice and support to all employees if they feel they are being disadvantaged in any way due to their particular characteristics
- supporting and promoting equality across the organisation.

### 3.2.3 Managers

Managers are responsible for ensuring their department is aware of their responsibilities under this Policy through providing appropriate advice and guidance to all staff on the use of the Policy and its application generally and specifically (i.e. individual cases). Managers are also responsible for notifying employees of any concerns relating to unsatisfactory conduct and / or behaviour in relation to this Policy and for applying the requirements of the Disciplinary Policy should the need arise.

### 3.2.4 Individual Staff

Every employee has a personal responsibility for their own behaviour and must treat their colleagues, service users and visitors with respect and fairness regardless of their race, sex, sexual orientation, gender reassignment, pregnancy and maternity, age, disability, religion and belief and marriage and civil partnership.

## 3.3 Service Provision to Trans Persons

### 3.3.1 General Principles

HSSD will ensure that Trans people, both service users and staff, are accepted and treated at all times as the gender in which they permanently present. HSSD has a legal duty to ensure that people are protected from discrimination or harassment which includes not tolerating negative views, comments or opinions of other service users or members of staff.

In instances where a Trans person is admitted to inpatient services, protecting their dignity, safety and privacy must be paramount. Decisions such as ward / room allocation should be made in conjunction with the service user themselves and in accordance with their preferences as far as is possible. Accommodating Trans people in line with their preferred gender is not optional and must be the starting point of any interaction with a Trans person.

Where a Trans person has notified HSSD of a change of name and title, they must be addressed using the new personal details in all forms of communication. In all respects, Trans persons will be addressed in line with their current gender status.

Trans people have legal protection against discrimination. In addition, good practice requires that clinical and social care responses be user-centred, respectful and flexible towards all Trans people.

### 3.3.2 Inpatient Accommodation

The following provides an overview of best practice as regards the provision of inpatient accommodation to Trans patients. It is acknowledged, however, that HSSD and Jersey General Hospital in particular has significant challenges from having an insufficient number of isolation / side rooms. Whilst this will be addressed with the Future Hospital, current restrictions dictate that isolation / side rooms are prioritised for the following patient groups and situations:

- acutely unwell patients who have communicable infectious diseases;
- patients who are immunocompromised (low resistance to infection);
- patients requiring a low stimulus environment for clinical reasons; and
- where possible, care of the dying.

As a result, depending on general demand throughout the hospital service, isolation / side rooms may not be available for accommodating Trans patients for purposes of privacy and dignity alone.

Whilst use of an isolation / side room cannot be guaranteed for Trans patients, HSSD commits to providing a non-guaranteed isolation / side room should one be available on the understanding that the individual may be transferred elsewhere should a clinical need arise for the isolation / side room. In the absence of an isolation / side room, each ward-based bed space is equipped with a curtain to ensure privacy and dignity. Providing the nursing staff are satisfied no clinical risk to observing a patient would result, a patient may request for their curtain to remain around the bed space at all times.

Best practice dictates, and HSSD commits to adhere to where possible, the following:

- 3.3.2.1 Trans people should be accommodated according to their gender presentation: the way they dress, and the name and pronouns that they currently use which may not always accord with the physical appearance of the chest or genitalia. Different genital or breast appearance is not a bar to this, since sufficient privacy can usually be ensured through the use of curtains or, in exceptional circumstances and where clinical demand allows, by accommodation in an isolation / side room adjacent to a gender appropriate ward.
- 3.3.2.2 The approach in 3.3.2.1 does not depend upon them having a Gender Recognition Certificate or legal name change.
- 3.3.2.3 The approach in 3.3.2.1 applies to toilet and bathing facilities.
- 3.3.2.4 Those Trans patients who have undergone full-time transition should always be offered accommodation according to their gender presentation. However, it may be the case in exceptional circumstances, due to the

nature of the treatment or surgery, availability of beds, genital operative state of the patient, patient history and wishes (including the patient's own anxieties and concerns), that an isolation / side room adjacent to a gender appropriate ward may be provided instead, subject to clinical demand / availability.

- 3.3.2.5 This approach may only be varied under special circumstances where, for instance, the treatment is sex-specific and necessitates a Trans person being placed in an otherwise opposite gender ward. Such departures should be proportionate to achieving a "legitimate aim" such as a safe nursing environment. All such situations must be discussed with the individual concerned, with agreed arrangements in place prior to admission that respect the patient's wishes, without adding the penalty of additional waiting time compared to other patients needing the same service. All arrangements must ensure the privacy and dignity of the patient rather than being for the convenience of the staff.
- 3.3.2.6 Views of family members may not accord with the Trans person's wishes, in which case, the Trans person's view takes priority.
- 3.3.2.7 Confidentiality is essential. Discussions related to accommodating a person sensitively and meeting their needs should be undertaken only with relevant persons and with the consent of the Trans person.
- 3.3.2.8 If staff are unsure of a person's gender, they should, where possible, ask discreetly where the person would be most comfortably accommodated.
- 3.3.2.9 If, upon admission, it is impossible to ask the view of the person because he or she is unconscious or incapacitated then, in the first instance, inferences should be drawn from presentation and mode of dress. No investigation as to the genital sex of the person should be undertaken unless this is specifically necessary in order to carry out treatment.
- 3.3.2.10 Post-operatively, or while unconscious for any reason, those Trans women who usually wear wigs may be required to remove them which could cause patients to be 'read' incorrectly as men. Extra care is required so that their privacy and dignity as women is appropriately ensured such as the provision of head scarves for patients to wear.
- 3.3.2.11 Trans men whose facial appearance is clearly male, may still have female genital appearance, so extra care is needed to ensure their dignity and privacy as men and vice versa.

### 3.3.3 Emergency Department Attendance

Not knowing whether a person is Trans in the Emergency Department (ED) may be potentially life threatening in some circumstances. Gender presentation is indicative of gender role and how a patient should be accommodated, but not what their birth sex was. For this information it is necessary to rely on any friends or relatives that accompany an unconscious or critically ill person, clinical notes or colleagues, if the person was a previous hospital patient. If it is not relevant to the

critical incident being investigated, there is no need to determine whether the patient is Trans even if examination indicates that possibility.

Where admission / triage staff are unsure of a person's gender, they should, where possible, ask discreetly where the person would be most comfortably accommodated and their preferred title. They should then comply with the patient's preference immediately, or as soon as practicable.

If upon admission, it is impossible to ask the view of the person because he or she is unconscious or incapacitated then, in the first instance, inferences should be drawn from presentation and mode of dress. No investigation as to the genital sex of the person should be undertaken unless this is specifically necessary in order to carry out treatment.

### 3.3.4 Diagnostics

Diagnostics and blood tests can be a cause for concern if assumptions are made that the blood chemistry profile of a Trans man will match that of other men, and that a Trans woman will match the exact profile of other women. It cannot be assumed that if the individual is taking cross gender hormones this will mean that test markers and diagnostic results resemble stereotypical male and female ranges.

Cross-hormone treatment can cause side effects, which may be misdiagnosed if a patient's Trans status is ignored. Best practice requires regular blood monitoring to ensure the Trans person's good health.

Where a patient has not had any recent blood test investigations the clinician should, as an initial precaution at first assessment, ensure the Trans person undergoes a full range of essential blood tests to rule out the effects of either over- or under-dosage of hormones. This is a common problem that can be asymptomatic or can present as a more general non-specific malaise.

The results of X-rays, MRIs and other imaging devices can cause confusion where a patient's Trans status is not known to the relevant technician or consultant. It is sensible to make the operator aware and to discuss this with the Trans person. Straightforward limb X-rays should not create an issue. Ultrasound, MRI or other imaging devices scanning the thorax, abdomen or pelvis may show up physical discrepancies and give potentially misleading results if the clinician is not aware of the person's birth sex.

### 3.3.5 Bereavement

Bereavement in the hospital setting is a difficult time for next of kin, relatives, friends and clinical staff. A Trans bereavement must be treated very sensitively by nursing and mortuary staff. It is good practice to assume that a Trans person who has changed their name by statutory declaration or deed poll is in fact a member of their confirmed sex for all purposes.

The right to privacy and non-disclosure for Trans people is maintained in death. Even if relatives or senior colleagues feel the person's Trans status is public



knowledge or well known in the hospital setting, the Trans person's original birth gender must not be divulged to anyone else. This does not apply where there is a medical or legal need to know.

Discretion should be used when deciding how to formally identify the body which, depending on the stage of transition, may resemble that of a person of their former gender or present as mixed gender necessitating careful consideration when determining how to handle the body and what information is passed onto third parties. Liaising with a partner or next of kin, even the family GP, is acceptable to ascertain the correct name and gender in cases where this does not match the birth certificate. Where the deceased has been living permanently in their confirmed gender but without a Gender Recognition Certificate, it is permissible to register the death in that gender.

Nursing staff will need to ensure that the dignity of the Trans person is maintained in death. Where the view is expressed that the deceased person is a crossdresser or just temporarily in the opposite gender role and the identification documents to hand do not conclusively confirm which gender the person lived in permanently, it is acceptable to ask the police to find out by contacting the relevant Parish Hall or Passport Office.

It is often the case that Trans people become estranged from their families and from marriage relationships. Many relatives, including parents, fail to accept the confirmed gender of their relative, son or daughter, and refuse even in death to use their chosen name and gender identity, even in cases where the Trans person has lived for many years in that gender role. In these situations, the confirmed gender identity and name should be obtained through liaison with a partner or friend and used on the death certificate and other official hospital documents.

It is essential that the deceased is presented respectfully in the appropriate gender and treated with dignity when preparing them for any ward viewing prior to removal to the mortuary. After removal from the ward and any required preparation to facilitate removal, such as removing an intravenous drip, standard hospital practice and guidelines should be followed.

### 3.3.6 Children and Young People

Gender variant children and young people should be accorded the same respect for their self-defined gender as are Trans adults, regardless of their genital sex.

Where there is no segregation, as is often the case with children, there may be no requirement to treat a young gender variant person any differently from other children and young people. Where segregation is deemed necessary, then it should be in accordance with the dress, preferred name and/or stated gender identity of the child or young person.

In some instances, parents or those with parental responsibility may have a view that is not consistent with the child's view. If possible, the child's preference should prevail even if the child is not Gillick competent.

### 3.3.7 Practical Steps and Adjustments

3.3.7.1 Provide people who are transgender with opportunities to discuss any concerns or specific arrangements to meet their needs.

3.3.7.2 Ensure care is taken regarding language used. In particular, use the pronoun (“he” or “she”) that is consistent with the person’s dress and appearance. If the person’s appearance is ambiguous, it is acceptable to use “they”.

3.3.7.3 Practical steps in services that are sex-specific might include:

- Systematically offering the first appointment of the day.
- Discussing recovery process options with the patient in terms of ward and level of post-surgery care but ensure that the patient is given the ultimate choice.
- With the permission of the patient, providing a brief to theatre staff and considering introducing the patient to the nursing and theatre staff.
- At the request of a patient, offering a private area for them to register their details, rather than in the main reception in front of other people.
- Allocating a separate room, off the main ward, with a ‘Do not Disturb’ sign to restrict access.
- Using initial and surname on boards rather than first names.
- Allocating a specific nurse to post-operative care in order to maintain privacy.

### 3.4 Transgender Identity Disclosure

Members of staff must be aware that it is an offence to disclose a person’s Trans status to any other person where such information has been acquired in an official capacity unless the Trans person has agreed to such disclosure.

The Gender Recognition (Disclosure of Information) (Jersey) Order 2010 provides a limited exception permitting disclosure for medical purposes of protected information if:

- the disclosure is made to a health professional for medical purposes; and
- the person making the disclosure reasonably believes that the subject has given consent to the disclosure or cannot give such consent.

Where a Trans person is capable of giving consent to aspects of their medical treatment, then health professionals must obtain their consent if it is clinically desirable to disclose their gender history to another health professional. Unless there is clear clinical need for such disclosure, it should be avoided.

### 3.5 Health and Social Care Records

HSSD follows the recommendation of the Records Management Code of Practice for Health and Social Care 2016 published by the Information Governance Alliance for the UK Department of Health to create new Hospital case notes for transgender persons.

More information can be found in the Hospital Records for Transgender Persons Procedure (currently under development).

### 3.6 Responsibilities as an Employer

HSSD supports and respects diversity in all aspects of its functions, including those relating to employer responsibilities. HSSD views discrimination against employees as unacceptable in any form and transgender employees will enjoy the right to equal treatment and protection from discrimination and harassment.

The legal framework protecting the rights of transgender employees has been included as Appendix A to this Policy.

More information is in the Equality and Diversity Policy.

### 3.7 Review and Further Development

Since this Policy relates to a relatively new area for consideration by HSSD, it will be subject to review after 12 months to assess its suitability and practical implementation. Should issues arise before this formal review, then this Policy should be revisited at once.

It is recognised that this Policy will evolve through testing against real situations and will reflect learnings from these situations.

All day to day operational queries relating to this Policy should, in the first instance, be directed, as appropriate, to: General & Acute Management at the Hospital, Senior Management at Community and Social Services or the Senior Nurse on call if out of hours.

## 4. DEVELOPMENT AND CONSULTATION PROCESS

### 4.1 Consultation Schedule

| Name and Title of Individual                             | Date Consulted |
|--|----------------|
| [REDACTED], Lead Nurse                                   | June 2017      |
| [REDACTED], Consultant Physician                         | June 2017      |
| Gordon Muvuti, Interim Director – Mental Health Services | June 2017      |
| Karen Excell, Director – CAMHS                           | June 2017      |

|   |            |
|---|------------|
| [REDACTED], Director of Radiology and Imaging                                   | June 2017  |
| [REDACTED], Consultant – Emergency Department                                   | June 2017  |
| [REDACTED], Pathology Manager   | June 2017  |
| Susan Devlin, Managing Director – Community & Social Services                   | April 2017 |
| [REDACTED], Deputy Director of Operations and Divisional Lead Surgical Services | March 2017 |
| Helen O’Shea, Managing Director – Hospital                                      | March 2017 |
| Michelle West, Director of Operations   | March 2017 |
| Tony Riley, Director of Human Resources   | March 2017 |
| [REDACTED], Liberate Jersey   | June 2017  |
| [REDACTED], Liberate Jersey   | June 2017  |

| Name of Committee / Group | Date of Committee / Group Meeting |
|---------------------------|-----------------------------------|
| Law Officers’ Department  | November 2016 / March 2017        |
| Policy Ratifying Group    |                                   |

## 5. REFERENCE DOCUMENTS

[Discrimination \(Jersey\) Law 2013](#)

[Gender Recognition \(Approved Jurisdictions\) \(Jersey\) Order 2010](#)

[Gender Recognition \(Disclosure of Information\) \(Jersey\) Order 2010](#)

[Gender Recognition \(Jersey\) Law 2010](#)

Hospital Records for Transgender Persons Procedure 2017 (in development)

[Human Rights \(Jersey\) Law 2000](#)

[The Records Management Code of Practice for Health and Social Care 2016 – Information Governance Alliance for the UK Department of Health](#)

## 6. BIBLIOGRAPHY

[An introduction to working with transgender people: information for health and social care staff – Department of Health](#)

[Bereavement: A guide for Transsexual, Transgender people and their loved ones – Department of Health 2007](#)

[Eliminating Mixed Sex Accommodation \(Memorandum\) – Chief Nursing Officer and Director General NHS Finance, Performance and Operations 2009](#)

[Providing Hospital Services to Trans Patients Protocol – Yorkshire and Humber](#)

[Provision of goods, facilities and services to trans people – Equality and Human Rights Commission Public Sector Guidance](#)

[Transgender Guide for NHS Acute Hospital Trusts – Royal Free Hampstead NHS Trust](#)

[Transgender Policy for \(i\) Provision of Generic Health Services; and \(ii\) Employer's Duty – Greater Glasgow and Clyde NHS Trust](#)

[Transgender Support Policy – East Cheshire NHS Trust](#)

## 7. GLOSSARY OF TERMS

| TERM  | MEANING   |
|---|---|
| Cross-Dressing                                    | Where a person simply wears, either occasionally or more regularly, clothing associated with the opposite gender (as defined by socially accepted norms). Cross-dressing people are generally happy with the gender with which they were labelled at birth and do not want to permanently alter the physical characteristics of their bodies or change their legal gender. They may dress as the opposite gender for emotional satisfaction, erotic pleasure, or just because they feel more comfortable doing so. Cross-dressing men are sometimes referred to as transvestite men, however this is becoming an increasingly out-dated term and may cause offence. |
| Discrimination                                    | Where a person treats another person, because of a protected characteristic, less favourably than they treat or would treat others.   |
| Female-to-Male (FTM) Transgender Man or Trans Man | Someone who was labelled female at birth but has a male gender identity and therefore is currently seeking to transition, or has already transitioned, to live permanently as a man.  |
| Gender Dysphoria                                  | The medical diagnosis for the condition with which a person has a consistent and overwhelming desire to live in another gender to that assigned at birth or does not conform with the gender role their respective society prescribes to them.  |
| Gender Identity                                   | The gender with which a person identifies. This is not necessarily the same as the sex they were assigned at birth or based on biological fact, either real or perceived, nor is it always based on sexual orientation.   |
| Gender Reassignment or Sex Reassignment Therapy   | The process of transitioning from the gender assigned at birth to the gender with which the person identifies – often referred to as transitioning. This may involve medical and / or surgical procedures. In addition, transsexual people who go through gender reassignment may change their social gender roles, legal names and legal sex designation. Transition describes the point at which a permanent change of gender role is undertaken, in all spheres of life - in the family, at work, in leisure pursuits and in society generally. Some people make this change gradually whilst others emerge overnight.   |

|   |   |
|---|---|
| Gillick Competency                                    | Also known as the “Fraser Guidelines”. Refers to the decision reached by the High Court in Gillick v West Norfolk and Wisbech Area Health Authority in 1984 and upheld by the House of Lords in 1985 which looked specifically at whether doctors should be able to provide contraceptive advice or treatment to minors aged under 16 years of age without parental consent. Latterly, the guidelines established have been used more widely to help assess whether a minor has the maturity to make their own decisions and to understand the implications of those decisions. Per the judgement delivered by Mr Justice Woolf “...whether or not a child is capable of giving the necessary consent will depend on the child’s maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent.” |
| Harassment  | Where a person engages in unwanted conduct towards another person that is related to a protected characteristic and which has the purpose or effect of:<br><br>(a) violating the subject’s dignity; or<br>(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the subject.   |
| Legal Sex   | Previously, the legal sex of a person was defined by their birth certificate and could not be changed. The Gender Recognition (Jersey) Law 2010 affords a Trans person with a Gender Recognition Certificate from an approved jurisdiction the ability to have that Certificate approved in the Royal Court of Jersey and to thereby gain recognition in Jersey of their change of gender for all legal purposes.   |
| Male-to-Female (MTF) Transgender Woman or Trans Woman | Someone who was labelled male at birth but has a female gender identity and therefore is currently seeking to transition, or has already transitioned, to live permanently as a woman.  |
| Non-Binary Gender Identities                          | An umbrella term for people, who do not feel comfortable thinking of themselves as simply either men or women. Instead they feel that their gender identity is more complicated to describe. Some may identify their gender as being a combination between a man and a woman, as sometimes a man and sometimes a woman, or alternatively as being neither (androgynous, third gender, polygender, genderfluid, bi-gender, agender, genderqueer, neutrois). Like Transgender people, Non-Binary people can experience gender dysphoria (sometimes as intensely as Transgender people do) and may sometimes at least partially transition socially and may take hormones or occasionally have surgical procedures.  |

|                                   |   |
|-----------------------------------|---|
| Protected Characteristics         | Those characteristics prescribed within Schedule 1 to the Discrimination (Jersey) Law 2013 including race, sex, sexual orientation, gender reassignment, pregnancy and maternity, age and disability.   |
| Protected Information             | Information relating to a Trans person that is protected by a Gender Recognition Certificate from an approved jurisdiction or that concerns any application under the Gender Recognition (Jersey) Law 2010 or, where an application for a Gender Recognition Certificate has been granted by the Royal Court of Jersey, otherwise concerns their gender before it becomes the acquired gender.  |
| Sexual Orientation                | Whether a person is attracted to people of their own sex, the opposite sex or both sexes and is a separate issue from gender identity. Trans people may be gay, lesbian, bisexual, heterosexual or, occasionally, asexual. Their sexual relationships may remain the same through the transition process, or they may change.   |
| Trans                             | <p>An umbrella term for people whose gender identity and / or gender expression differs from the sex they were assigned at birth, including transgender and transsexual people (those who intend to undergo, are undergoing or have undergone a process of gender reassignment to live permanently in their acquired gender), transvestite / cross-dressing people (those who wear clothing traditionally associated with the other gender either occasionally or more regularly), androgyne / polygender people (those who have non-binary gender identities and do not identify as male or female), and others who define as gender variant.</p> <p>For the purpose of this document the terms Trans and Trans people will be used as it is a more encompassing term and generally accepted by the Trans community.</p> |
| Transgender or Transsexual Person | <p>A person whose own identity does not conform to the sex with which they were assigned at birth and who lives (or wishes to live) permanently in a gender role other than the one they were assigned at birth.</p> <p>Pursuant to Article 5(2, 3 and 4) of Schedule 1 to the Discrimination (Jersey) Law 2013, a person proposing to undergo, undergoing or who has undergone a process (or part of a process) for the purpose of reassigning their gender by changing their physiological or other attributes that are associated with a particular gender is known as a transgender person whether or not they have or intend to have any medical intervention in order to change any attributes that are associated with a particular gender.</p>  |
| Transition                        | A Trans person who wishes to live permanently in the social role of the opposite gender makes changes necessary for them to function in this role – this is known as transition or transitioning.   |

|             |  |
|-------------|--|
| Transphobia | A fear and dislike of Transgender people which can lead to hatred resulting in verbal or physical attacks and abuse. |
|-------------|--|

## 8. IMPLEMENTATION PLAN

| Action  | Responsible Officer                   | Time Frame         |
|---|---------------------------------------|--------------------|
| Brief MSC   | Hospital Director                     | Once policy agreed |
| Brief hospital operations Sisters and allied healthcare professionals | Divisional Surgical and Medical Leads | Once policy agreed |
| Facilities and Estates staff  | Director of Facilities                | Once policy agreed |
| All users e-mail  | Comms Officer                         | Once policy agreed |



## APPENDIX 1 – Relevant legislation

### 1. Discrimination (Jersey) Law 2013 (DJL)

The DJL makes it unlawful to discriminate against a person who “is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning” their gender. Gender reassignment is stated to be construed as a process of “changing the person’s physiological or other attributes that are associated with a particular gender.” However, it is not a requirement for the person to have or intend to have “medical intervention in order to change any attributes that are associated with a particular gender.”

Under the DJL, it is unlawful to discriminate on the grounds of gender reassignment in, amongst other matters:

- paid work – in relation to recruitment, conditions of employment, promotion, transfer, training, dismissal, redundancy etc
- provision of goods, facilities and services – in relation to the refusal to provide or make available goods, facilities or services, the terms or conditions for the provision of goods, facilities or services, or the manner in which goods, facilities or services are made available
- access to and use of public premises – in relation to the refusal of access or use, the terms or conditions upon which access or use is granted, the means of access and the cessation of use

Discrimination, direct and indirect, is defined in terms of the comparative treatment of a Trans person and the treatment of others and, in particular, whether such treatment of a Trans person is less favourable than that of others.

Schedule 2, Part 2, Paragraph 20 provides an exception relating to the provision of communal accommodation allowing a restriction for use by one sex as long as such accommodation is managed in a way that is as fair as possible to people of different sexes.

The DJL specifies maximum remedies for prohibited acts of £10,000 for financial loss and £5,000 for hurt and distress (provided the total award does not exceed £10,000).

### 2. Discrimination (Sex and Related Characteristics) (Jersey) Regulations 2015 (SRC)

The key function of the SRC is to amend the DJL, as enacted, through the introduction of the following as further protected characteristics in addition to race:

- sex
- sexual orientation
- gender reassignment
- pregnancy and maternity

### 3. Gender Recognition (Jersey) Law 2010 (GRJL)

The GRJL provides legal recognition to Trans people following a permanent change of gender. It establishes the process for granting a Gender Recognition Certificate to a person who has changed gender in accordance with the law of an approved jurisdiction (as listed in the Gender Recognition (Approved Jurisdictions) (Jersey) Order 2010). The Royal Court may issue an interim certificate – where the applicant is either married or in a civil partnership – or a full certificate – where the applicant is neither married nor in a civil partnership.

A full certificate can be granted to the holder of an interim certificate where:

- the Royal Court grants a decree of nullity under the Matrimonial Causes (Jersey) Law 1949 on the grounds that an interim certificate has been issued;
- the Royal Court grants a decree of nullity under the Civil Partnership (Jersey) Law 2012 on the grounds that an interim certificate has been issued;
- the Trans person's marriage or civil partnership has been dissolved or annulled on grounds other than the issuance of an interim certificate in proceedings instituted within 6 months of the interim certificate being issued;
- the Trans person's spouse or civil partner has died within 6 months of the interim certificate being issued.

Once a full certificate has been issued to a person, they acquire, for all purposes in Jersey, the gender to which they have changed. Upon receipt of an original full certificate, HSSD is required to amend the gender of the applicant in their records. A certificate is not required for changes to names – such can be achieved upon the presentation of other formal documentation such as a deed poll issued by the Royal Court of Jersey, Decree Absolut or marriage certificate.

Article 18 makes it a criminal offence for a person who has acquired, in an official capacity, information regarding an application for gender reassignment or a person's gender history to disclose such information to any other person. Article 18(4) identifies certain exemptions to the prohibition on disclosure, which include:

- (a) the information does not enable the applicant to be identified;
- (b) the applicant has agreed to the disclosure of the information;
- (d) the disclosure is in accordance with an order of a court or tribunal;
- (f) the disclosure is for the purpose of preventing or investigating crime.

Further exemptions as provided for in the Gender Recognition (Disclosure of Information) (Jersey) Order 2010 are detailed in Section 6 of this Policy.

#### 4. Gender Recognition (Disclosure of Information) (Jersey) Order 2010 (DoI)

The DoI provides a limited exception permitting disclosure for medical purposes of protected information as detailed in Section 6 of this Policy.

#### 5. Gender Recognition (Approved Jurisdictions) (Jersey) Order 2010 (AJ)

The AJ lists the approved jurisdictions for the purposes of the GRJL. As at the date of this Policy, the jurisdictions so approved are:

|  |  |
|--|--|
| Australian territories of Australian Capital Territory and Northern Territory and the states of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia | Moldova  |
| Austria  | Netherlands  |
| Belgium  | New Zealand  |
| Bulgaria   | Norway   |
| Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec and Saskatchewan and the Yukon Territory             | Poland   |
| Cyprus (Republic of)   | Romania  |
| Denmark  | Russian Federation   |
| Estonia  | Slovakia   |
| Finland  | Slovenia   |
| France   | South Africa   |
| Germany  | Spain  |
| Greece   | Sweden   |
| Iceland  | Switzerland  |
| Italy  | Turkey   |
| Japan  | Ukraine  |
| Latvia   | United Kingdom   |
| Luxembourg   | District of Columbia and all of the states of the United States of America except for Idaho, Ohio, Tennessee and Texas |
| Malta  |  |