

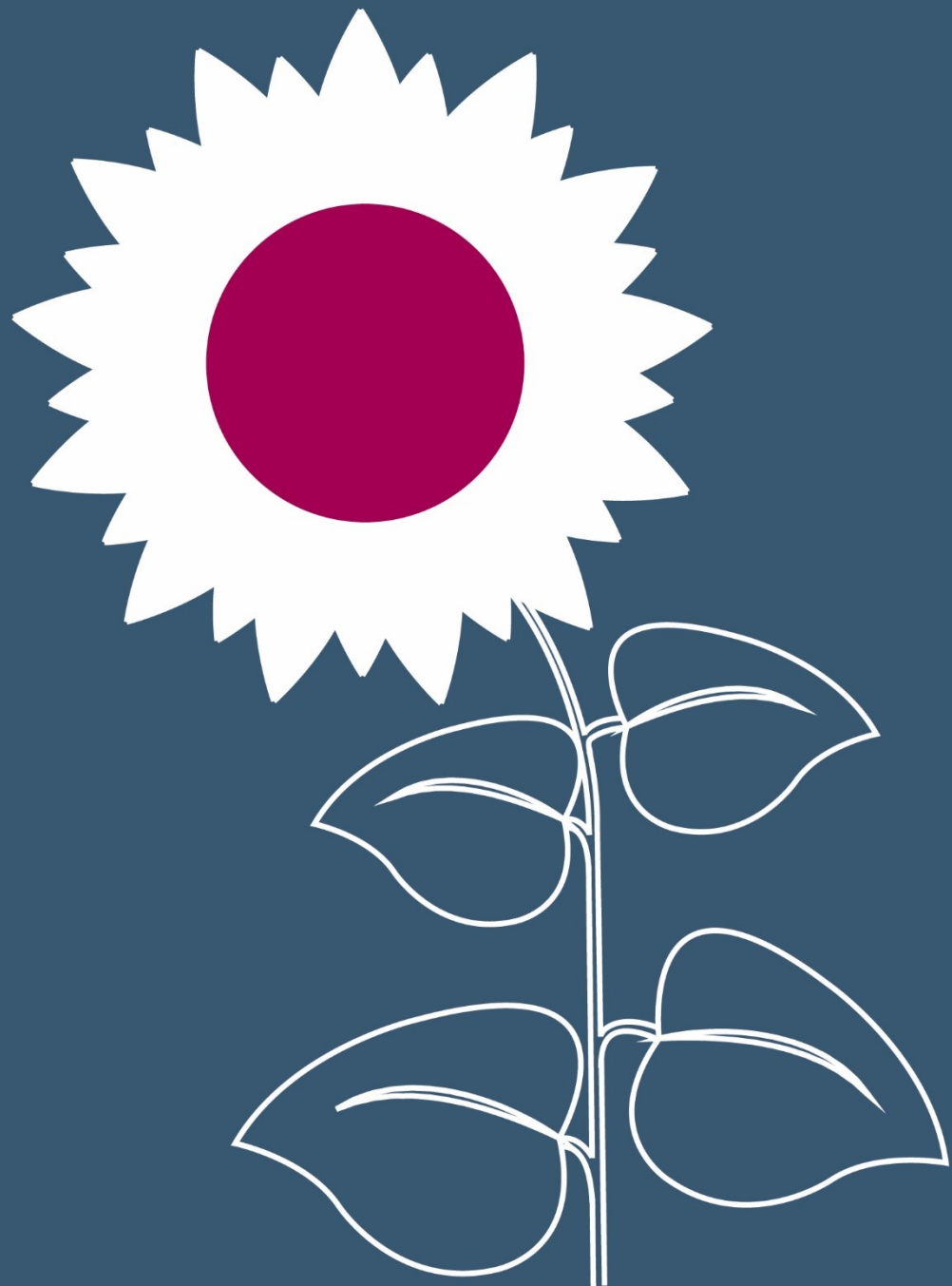


City of  
**Stoke-on-Trent**

# Gender Questioning for Children/Young People

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# Contents

1	Summary.....	3
2	Introduction .....	3
3	Principles .....	4
4	Scope.....	4
5	Legislation.....	4
6	Employees Responsibilities .....	5
6.1	Responsibilities of Managers .....	5
6.2	Responsibilities of staff and workers .....	6
7	Safeguarding Considerations and Reporting Hate Crimes.....	6
7.1	Safeguarding Considerations .....	6
7.2	Reporting Hate Crimes.....	7
8	Transgender Identity .....	7
8.1	Use of Pronouns .....	8
8.2	Managing Phone Calls .....	8
8.3	Recording Names .....	8
9	Changing Titles and Names.....	9
9.1	Changing Titles .....	9
9.2	Changing Names .....	9
9.3	Changing names when the person requesting it is 16 or 17 .....	10
9.4	Changing names when the person requesting it is under 16 years old .....	10
9.5	Recording on LCS.....	10
10.0	Accessing Toilets .....	11
10.1	Pre-transition .....	11
11	Medical Procedures.....	11
11.1	Sleeping Arrangements .....	11

11.2	Medications.....	11
11.3	Chest Binding .....	12
12	Good Practice Tips.....	12
12.1	General Tips .....	12
12.2	Specific Practice Tips When Working with Transgender Children and Families .....	13
13	References.....	14
	Appendix 1 .....	15
	Appendix 2 .....	17
	Appendix 3 .....	18

## 1 Summary

This policy outlines how Stoke-on-Trent City Council, will promote equality, diversity and inclusion with due regard to the protected characteristics of Transgender and Sexual Orientation Equality.

Everyone has a right to be treated with dignity and respect and Stoke-on-Trent City Council recognises its legal duties under the Equality Act 2010 (Appendix1) and Human Rights Act 1999 (Appendix 2).

## 2 Introduction

Stoke-on-Trent City Council is committed to creating a culture in which equality, diversity, inclusion and human rights are actively promoted and unlawful discrimination is not tolerated. Stoke-on-Trent City Council recognises that the experiences and needs of every individual are unique and thus strives to respect and value the diversity of our young people and staff.

Promoting equality, diversity and inclusion with due regard to the protected characteristics of Transgender Equality, Sex or Sexual Orientation is central to all the Organisation functions and activities. We aim to treat all staff and young people fairly by providing equality of opportunity in employment, development, promotion and retention of skills and experience and to provide fair and equal access to services for residents of Stoke-on-Trent City Council.

## 3 Principles

Stoke-on-Trent City Council is firmly committed to the principles of equality and diversity in both employment and delivery of services. This means:

- Promoting equality of opportunity for people of all sexual orientations which includes transgender people;
- Eliminating discrimination for people of all sexual orientations including transgender people that is lawful under the Equality Act 2010 and Gender Recognition Act 2004; (Appendix 3);
- Promoting equality of opportunity and helping to foster good relationship between people of all sexual orientations including transgender people and other people.

## 4 Scope

This policy applies to all staff and residents of Stoke-on-Trent City Council. This includes all those directly employed by Stoke-on-Trent City Council and those on honorary contracts, secondments and agency staff.

## 5 Legislation

The House of Commons Select Committee Report Transgender Equality (2016) found that gender variant young people and their families face particular challenges at school. Sixty recommendations were made including:

- Considering the emotional impact and supporting young people
- How to respond to young people telling you this
- Recording a change of name and gender
- Bullying
- Inclusion in sport
- Access to toilets

Transgender Guidance for Schools July 2015 provides useful guidance on supporting children and young people, including guidance on practical considerations such as sports and physical education, toilets and changing facilities, and issues that may be important in the context of school trips. Whilst this guidance is primarily written for schools, it is of interest to other situations such as residential children's homes.

The guiding principle should be to listen to, respect and act upon the expressed wishes of the child/young person.

The Equality Act 2010 ensures legal protection against discrimination (direct or indirect) for everyone under the nine protected characteristics defined in the Act, one of which is Gender Reassignment (also known as Transgender). In order to be protected under the Act, a person will not necessarily have to be undergoing a medical procedure to change their sex, but they must be living permanently in their preferred gender or intending to so do.

**Example:**

*A born female person increasingly changes their clothes to become more masculine, adopts a new style of address e.g. Pat instead of Patricia. As s/he enters his/her late teen years s/he is increasingly perceived as a man and by the time s/he is 15, Pat has gradually become Patrick. Though some neighbours know Patrick's past, Patrick is very happy with the situation in which everyone else regards him as a man.*

For the Equality Act 2010, Patrick is a person who has undergone gender reassignment despite never having been assessed, taken hormones, or had any surgery.

The Gender Recognition Act 2004 is mainly concerned with the process by which a person can get a Gender Recognition Certificate, and correct their original birth certificate to match their true gender (if their birth was registered in the UK). This can only occur after a person turns 18.

A person with a Gender Recognition Certificate has no obligation to disclose the fact, although they may need to do so in certain circumstances. These include, for instance if a Criminal records or safeguarding disclosure is required (though the employer would not be informed by the Disclosure of Barring Service (DBS) of the Gender Recognition Certificates; Medical assessment is required and this involves information about surgery undergone or medication taken. It is a criminal offence to disclose someone's gender history if they hold a Gender Recognition Certificate.

## **6 Employees Responsibilities**

### **6.1 Responsibilities of Managers**

- Managers should understand Stoke-on-Trent City Council values and their impact on the staff and residents of the home. They are expected to promote fairness, diversity and equality of opportunity for all and assist with eliminating discrimination. They should help to promote an inclusive environment by treating colleagues, residents and visitors with dignity and respect.
- Managers are required to make clear to all staff the implications of the law and the policy on diversity, equality, inclusion and human rights when dealing with residents and colleagues.
- Line managers should, when required, identify appropriate training and support to enable staff to achieve their responsibilities in relation to resident care.

## 6.2 Responsibilities of staff and workers

- Staff should understand Stoke-on-Trent City Council Values and how their impact on staff and residents. They have a personal responsibility not to discriminate and to inform their line manager if they suspect any discrimination is taking place in relation to staff or residents. They should help to promote an inclusive environment by treating colleagues, residents and visitors with dignity and respect.
- Staff has a responsibility to ensure they undertake the mandatory Diversity & Equality training.
- Staff are also required to co-operate with measures introduced by Stoke-on-Trent City Council managers to ensure equality of opportunity.

# 7 Safeguarding Considerations and Reporting Hate Crimes

## 7.1 Safeguarding Considerations

The fact that a child has gender identity issues is not, of itself, a safeguarding issue. Such children may, however, be subject to prejudice, discrimination and misunderstanding, which can have a detrimental effect upon quality of life, and physical and mental health. In UK surveys of Transgender people, about half of young people report that they have attempted suicide.

Whilst gender identity issues would not generally, in isolation, necessitates safeguarding intervention, neither should they be a barrier to such intervention. For example, in the case of *Re J (a minor) [2016] EWHC 2430 (Fam)*, the High Court found that a mother had caused her son 'significant emotional harm' in her determination that he should be a girl.

Based on the findings the key question in this case was whether signs of possible gender conflict genuinely originated from the child, or were solely the perception of its mother; and this underlines that where the child's views and perceptions are at variance with the parents' views and perceptions, the presumption has to be that the child's own views and perceptions must always be listened to with respect and given their full weight.

Different cultures may take widely differing views of gender identity issues. Whilst some countries provide legal recognitions for a 'third gender', more conservative cultures may dismiss, refuse to accept or even outlaw issues related to gender identity. Children may be prevented from expressing their gender preferences, which may be detrimental to their emotional wellbeing, and may suffer discrimination, bullying and abuse. Intersex children may have unmet medical needs. In some cultures, children with gender identity issues may be ostracised from society and denied of basic human rights.

In extreme cases, some, such as intersex people, may be denied the right to 'legally exist', for example being denied the right to a birth certificate, which in turn denies them rights to education, employment and healthcare.

Where there is a suspicion that a child may be suffering significant harm as a result of gender identity issues then initiating Child Protection Procedures should be considered.

## 7.2 Reporting Hate Crimes

Hate crimes are crimes committed against someone because of their disability, gender identity, race, religion or belief, or sexual orientation. Hate crimes can include:

- Threatening behaviour
- Assault
- Robbery
- Damage to property
- Inciting others to commit hate crimes

If a hate crime has been committed, please see the GOV.UK guidance - Report hate crime online.

## 8 Transgender Identity

A Transgender person feels that their external appearance (sex) does not match up with the way they feel internally about their gender identity.

A Female to Male (FtM) person will have been assigned a female sex at birth yet identifies their gender as male; a Male to Female (MtF) person will have been assigned as male at birth yet identify their gender as female.

Note that some people will identify as non-binary which means they do not believe that there are just two genders and they exist outside of the gender binary. Some people want either more options for gender or the option not to have one at all.

**Important:** *Gender identity and sexual orientation are completely different.*

Gender identity is about your innate sense of being male, female, both or other. People are assigned a gender identity at birth based on their sex characteristics.

Sexual orientation is a term used to describe the focus of a person's sexual attraction and desires. A person may therefore describe themselves as being heterosexual, bisexual, gay or lesbian.

You can therefore be transgender and heterosexual or gay/lesbian/bisexual/asexual.

## 8.1 Use of Pronouns

Pronouns are used in sentences where a person's name would otherwise go. 'He' for male, 'She' for female, and 'They' is gender-neutral. There are specially-coined gender-neutral pronouns which can be used, such as 'Xe', or 'Ze', but these are not universally widely known. Using the appropriate pronouns when talking to someone who is transgender works on the basis of respect for the individual. Generally, the name the person chooses to use indicates their gender preference. So, a transgender child/young person called Steve may be referred to as "He", while another called Rachel may well prefer to be "She". But if you are unsure, it's best to ask the child/young person or adult politely how they wish to be known, and to respect their choice.

This is especially so if you suspect someone identifies as non-binary, in which case a gender-neutral term like "they" may be more appropriate.

## 8.2 Managing Phone Calls

The utmost discretion is needed when working in offices where members of the public may make incoming calls. Staff need to be alert to voices that do not match names and titles.

The main issue is likely to be associated with transgender females, (this includes young females, registered at birth as male now living as female). Many transgender females are unable to raise the pitch of their voice and treatment with female hormones has no impact on this so, particularly on the phone, their voices will sound masculine. Those taking incoming calls may jump to conclusions about the person, and say 'sir', which will be very upsetting.

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

## 8.3 Recording Names

- Accept a person's decision about their gender identity;
- Respect their fundamental human right to be true to themselves;
- Accept that living in accordance with their core gender identity is absolutely essential for their future happiness;
- Use the name and pronouns that person prefers: "he" or "she", "they". You may get it wrong, apologise and try to use the correct one even when the person concerned is not present.



Where a young person is under the age of 18, their wishes must be taken into account when recording any aspect of their identity on LCS.

Where a young person is under the age of 18, social workers and administrative staff must ensure that all communications and current information they hold regarding the gender identity of the young person are correctly reflected.

## 9 Changing Titles and Names

Changing their name and gender identity is a pivotal point for many Transgender people. If a Transgender person wishes to have their personal data recognised on our social care systems, this needs to be supported and will feed on to any communication we will have with the person.

### 9.1 Changing Titles

Most titles (such as Mr, Ms, Miss, Mrs and Mx) are not controlled by law in the UK.

Anyone can change their title to any of these, or one of the many other options, without doing anything special and without any documentation. We should therefore update titles on request. People can use any title regardless of their legal gender. Certain titles (such as Dr, Prof, Lord, Sir, etc.) are controlled by law and people cannot change their title to them unless they are entitled to use them.

### 9.2 Changing Names

In the UK the law says that a person can change their name just by starting to use a new name (subject to parental permission if they are under 16).

As long as it is not for fraudulent reasons, there is no legal requirement for any documentation whatsoever when it comes to making a change of name and people can have as many names as they want.

In practice many organisations will not update records without seeing evidence that the person's name has changed and that they have abandoned their previous name. There are several ways to produce this evidence:

- Free deed poll (or using deed poll services or deed poll enrolled with the Royal Court of Justice);
- Statutory declaration;
- Royal licence.

During transition, staff, in line with best practice, will discuss with the person the expected date when their names and personal details will need to be amended. After the person has successfully transitioned into their new gender role.

If old records are required to be kept, (reasons for this decision would need to be explicit and agreed by all parties concerned), then these will be kept in a locked down confidential electronic file, only accessible to named persons.

### **9.3 Changing names when the person requesting it is 16 or 17**

A 16 or 17 year old does not need anyone's permission to change their names unless there is a court order in place that says they can't (in which case they will have to wait until they are 18). Anyone who has parental responsibility for them could ask a court to overrule it, but the court would usually allow the name change apart from in exceptional circumstances.

### **9.4 Changing names when the person requesting it is under 16 years old**

The young person will need permission from everyone who has parental responsibility for them - even if they haven't had contact with one or all of them for years. Usually this means the people who are named on their birth certificate or adoption certificate. If they are under a care order then the Local Authority will have parental responsibility so they will have to consent. Where this is required, consent should only be made by the Service Manager in consultation with the Operations Director who is the Delegated Authority for the child. Where there is a shared responsibility for the Looked after Child between the parent and the Local Authority and the young person does not want the parent/s to be informed or contacted about a decision to change their gender identity, the Local Authority must always seek legal advice before giving consent.

For more information on Government guidance on Gender Recognition Certificates (T455) under the Gender Recognition Act 2004 and how to apply for those over the age of 18, please see the GOV.UK website.

Important: The Transgender person does not need to provide us with a Gender Recognition Certificate before we amend our records and the question about whether or not a person has a Gender Recognition Certificate is irrelevant and must never be asked. However, if they wish to inform us that they are in possession of a certificate and wish to have it documented, we may do so.

### **9.5 Recording on LCS**

In all instances where a child, young person, parent or carer has a preferred name and/or pronoun, LCS records should, in addition to their legal name and gender at birth, also include a notification of their preferred name and/or pronoun in the Personal Details Tab on LCS, within the Case Summary and any relevant records.

## 10.0 Accessing Toilets

Toilets and changing facilities are often deemed the most sensitive of all the issues. Concerns are that people may find themselves in vulnerable situations where they could fall victim to unwanted attention that could escalate into assault or emotional harm.

### 10.1 Pre-transition

**(this does not mean pre-surgery, it only means before the person lives full-time in their preferred gender).**

Transgender people should be able to use the facilities of their preferred gender. If they are not comfortable with using these facilities, then an accessible toilet should also be provided. Post-transition (this does not mean post-surgery, it means when the person presents full time in their acquired gender role).

Facilities such as toilets and changing rooms should be accessed according to the full-time presentation of the person in the new gender role. It is never appropriate to insist that a person who has transitioned, use only the accessible or unisex toilets unless these are the only facilities available or if they are preferred by the transgender person. If others do not wish to share the “ladies” or “gents” with a transgender person, then it is they, not the transgender person, who must use alternative facilities.

## 11 Medical Procedures

### 11.1 Sleeping Arrangements

Mangers are asked to risk assess new referrals and also current referrals to identify which bedroom is most appropriate for the young person, taking into account the young person’s preference and what is most appropriate for the other young residents.

### 11.2 Medications

The young person needs to be made fully aware that if for any reason urgent medical treatment is required, staff will need to disclose to paramedics and if necessary hospital clinicians their sex at birth.

Young person should be asked permission to share gender at birth and the medications that they are taking. However, staff must be clear that in the case of an emergency this information may need to be disclosed to paramedics / emergency clinicians without their permission as medical staff may need this information to ensure that adverse drug interactions do not occur.

## 11.3 Chest Binding

If a young person chooses to bind their chest, this practice needs to be monitored carefully as it comes with a risk of breathing impairment, particularly when partaking in physical activity. Staff must also let young person know that in the case of an emergency they may need to disclose this practice to paramedics/emergency clinicians so that they can be treated as medically appropriate.

# 12 Good Practice Tips

## 12.1 General Tips

- Treat transgender people as you would all other residents whilst considering the additional sensitivities they may face.
- Try not to assume someone's gender simply by their appearance.
- Try not to assume you can always tell someone's gender by looking at them or hearing their voice.
- Take each individual person's lead regarding language.

If someone makes it clear how they would like to be addressed in terms of their gender, especially as regards their name, pronoun and / or title, then respect those choices.

- Consider whether you need to ask someone's gender.
- Assume everyone selects the facilities appropriate to their gender:

A transgender person should be free to select the facilities (such as toilets or changing rooms) appropriate to the gender in which they present.

- Accept a range of ID other than a birth certificate:

You do not need to see a Gender Recognition Certificate (GRC) to amend personal details.

- Ask those who transition whilst using your services how you can support them: If someone transitions whilst using your services, ask the transgender person what would make them feel most comfortable at that time. It is sometimes useful to make a plan. For instance they may be ready to move to the facilities of their self-identified gender or they may wish for additional privacy at this time. Also you may decide to agree a date for the person's new name and pronoun to be used and for phone lists or registers etc. to be updated.

- Update documentation and records efficiently and sensitively:

A transgender person may wish to be referred to by a different name and pronoun and require their gender marker to be changed on documents and systems. The vast majority of documentation can and should be changed upon request as it simply enables you to identify a particular individual within your setting and has no other ramifications. In many instances it is not even necessary to see a formal name change document.

- Publicise your good practice and inclusivity to diverse groups:

Transgender people can experience difficult challenges - ranging from disappointment to outright fear and physical harm. Consequently, transgender people tend to look for clear evidence that service providers are transgender-friendly anywhere they are going, applying to, or otherwise engaging with. People may not use services or visit premises for fear of a negative response unless services make it clear they are welcome. Where appropriate, it can be helpful to include a statement of diversity values and make it visible.

## **12.2 Specific Practice Tips When Working with Transgender Children and Families**

Be aware of the issues being raised affecting transgender children and young people as well as the socio-political factors in the construction of gender identity and the limitations, as well as the diversity of gender expressions.

Understanding that there are as many ways to be transgender as there are transgender people. While you may hear the phrase “transgender community,” it should not be taken to mean that all transgender children are identical, that they have the same experience or understanding and view of gender.

The child or young person may have a chosen name that they prefer. It is acceptable to ask someone what name they prefer and then to respect their wishes. Use gender-neutral language and open-ended questions during C&F assessments or interviews.

## 13 References

- The House of Commons Select Committee Report Transgender Equality (2016)  
<https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>
- The Equality Act 2010 and other Diversity, Equality and Human Rights Legislation.
- Transgender Guidance for Schools July 2015.
- The Equality Act 2010 and other Diversity, Equality and Human Rights Legislation.
- Gender Recognition Act 2004.
- GOV.UK guidance - Report hate crime online.
- GOV.UK website information on Government guidance on Gender Recognition Certificates (T455) under the Gender Recognition Act 2004.

# Appendix 1

## **The Equality Act 2010 and other Diversity, Equality and Human Rights Legislation**

The Equality Act came into force in October 2010, harmonising and replacing previous antidiscrimination laws with a single Act. It says individuals are protected from discrimination in the workplace and wider society. It intended to ensure consistency in what employers' duties and responsibilities are in making their workplace a fair environment which complies with the law. Central to the Equality Act is the intention of the government to make sure equality and fairness are at the centre of its approach. The Act brings together 116 separate pieces of legislation into one Act including the:

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Age) Regulations 2006
- Equality Act 2006, Part 2
- Equality Act (Sexual Orientation) Regulations 2007

The Equality Act protects all the same characteristics covered by previous anti-discrimination law:

- Age
- Disability
- Gender reassignment
- Race
- Religion or belief
- Sex
- Sexual orientation
- Marriage and civil partnership
- Pregnancy and maternity

These groups are now referred to as 'protected characteristics'.

The Equality Act changes and refines certain concepts and definitions, specifically around the definitions of discrimination. The Equality Act also extends some protections to characteristics that were not previously covered in employment legislation.

The equality duty covered in section 149 of the Equality Act 2010 requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. It supports good decision making by ensuring that public authorities understand how different people will be affected by their activities, so that services are appropriate and accessible to all, and meet different people's needs.



# Appendix 2

## **The Human Rights Act 1998**

The Human Rights Act came fully into force on 02 October 2000. It gives further effect in the UK to rights contained in the European Convention of Human Rights. The Act makes it unlawful for a public authority to breach Convention rights, unless an Act of Parliament meant it could not have acted differently; means that cases can be dealt with in a UK court or tribunal; and says that all UK legislation must be given a meaning that fits with the Convention rights, if that is possible.

# Appendix 3

## **The Gender Recognition Act 2004**

The purpose of this Act is to provide transsexual people with legal recognition in their acquired gender. Legal recognition will follow from the issue of a full gender recognition certificate by a Gender Recognition Panel. In practical terms, legal recognition will have the effect that, for example, a male-to-female transsexual person will be legally recognised as a woman in English Law. On the issue of a full gender recognition certificate, the person will be entitled to a new birth certificate reflecting the acquired gender and will be able to marry someone of the opposite gender to his or her acquired gender.