Appendix A: model policy – working with transgender employees
November 2015
1. Introduction

This practice is committed to promoting equality and fairness in our employment practices. It is opposed to all unlawful discrimination, harassment and victimisation. This practice will not unlawfully discriminate on the grounds of gender reassignment.

It will encourage a diverse and inclusive working environment for employees, where people feel that they can be themselves, are valued for their individual differences and are treated with dignity and respect. This will help us attract, retain and progress the best talent into our workforce.

2. Definitions

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<th>Transgender and trans are inclusive term for people whose identity differs from what is typically associated with the sex they were assigned at birth.</th>
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<tr>
<th>Transsexual is a term used in the Equality Act 2010 to define those who fall within the protected characteristic of gender reassignment. A transsexual person is someone who has proposed to undergo, is undergoing or has undergone gender reassignment.</th>
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This policy uses the terms as defined above. Where the policy refers specifically to the legally protected characteristic under the Equality Act 2010, the term transsexual is used; as many trans people do not identify as transsexual and prefer the words trans or transgender, these words are used elsewhere in this practice note. It is best to ask which term an individual prefers.

The sexual orientation of transgender people is the same as for others – they may be heterosexual, gay, lesbian or bisexual.

3. Legislation

Transgender and transsexual people are protected by two key pieces of legislation:
- The Gender Recognition Act 2004 allows transsexuals to obtain a Gender Reassignment Certificate, and
- The Equality Act 2010 (as amended) outlaws discrimination in employment on the grounds of gender reassignment.

The relevant sections are described in more detail in the practice note Working with transgender employees.

In addition to these, the principles of both the Human Rights Act 1998 and the Data Protection Act 1998 are also relevant to transgender and transsexual people.
4. Policy principles

This practice will:

- comply with the equality provisions as set out in principle 9 of the Solicitors' Regulation Authority’s (SRA) Handbook
- not unlawfully discriminate on the grounds of gender reassignment
- not unlawfully harass or victimise employees on the grounds of gender reassignment
- have working practices which will operate in accordance with statutory requirements, taking into account relevant Codes of Practice
- have employment and service provision policies that promote fairness
- expect employees to behave in the spirit of the law and this policy
- recognise and value the differences and contributions of transgender people
- treat an employee’s transgender status with the utmost confidentiality
- treat all transgender employees with dignity and respect
- agree any communications regarding an employee’s transition with them in advance
- provide information to employees to increase their awareness of transgender and gender reassignment
- treat breaches of this policy as misconduct, which could lead to the full range of disciplinary action and penalties being applied
- review this policy annually

5. Responsibilities

The management of this practice will ensure that the policy is effectively implemented and operated.

The director of Human Resources is responsible for ensuring that the policy meets legal requirements and is updated appropriately.

Line managers are responsible for ensuring that their staff understand the policy principles and that they operate in line with its intentions. They are also responsible for ensuring that any grievances or complaints regarding breaches of this policy are managed in a timely and effective way, requesting help from HR as required.

Employees must comply with this policy and behave in the spirit of its principles. Solicitors who complete transition must update their registration with the Law Society as appropriate.

All employees must report any breaches of policy that they witness, whether by colleagues, clients or other third parties, to their line manager immediately.

6. Harassment

Harassment is unacceptable and whether it is by colleagues or third parties, it will be dealt with seriously. All employees should be alert to and report any form of harassment to their line manager. Unacceptable behaviour must be stopped immediately and not allowed to escalate.

Examples of harassment against transgender staff can include, but are not limited to:

- 'outing' someone as transgender
- violence or threat of violence
- unwanted physical contact, sexual advances or innuendo
- verbal abuse, including threats, derogatory name calling, insults, ridicule or belittling of transgender people
- using humour to put another person or group of people down, for example, telling inappropriate jokes about someone's gender identity
- spreading malicious lies or making insulting comments
- display or circulation of abusive or offensive materials relating to someone's gender identity, for example by email or on the internet, or on a whiteboard
- excluding transgender people from conversations, or from social events
- asking intrusive questions about someone's gender identity or transition

7. Memorandum of understanding

Where a person requests a formal document regarding a transition from one gender to another, a memorandum of understanding will be put in place so both parties can agree the detail and timing of communications and any other changes.

8. Social events

The needs of all participants will be considered when arranging social occasions. Professional and inclusive behaviour is expected at social events.

9. Considerations for employees

This list is not comprehensive but gives a guide to the provisions that you might want to review to ensure that you do not cause offence or embarrassment if a member of staff tells you they want to transition:

- dignity at work
- harassment
- communications
- selection
- progression
- pensions
- references
- name change
- registration
- toilet and bathroom facilities
- clothes
- record keeping

10. Employment provisions

10.1. Support

Transgender employees should make their line managers aware if they need any support during their employment with the practice.

10.2. Statutory rights

Although this policy encourages inclusion of all transgender employees, transsexual employees have some statutory rights in employment.
10.3. Communications
Managers will assist employees with communications regarding transition as appropriate and where agreed by both parties.

10.4. Changing jobs
The practice will seriously consider requests for a job change (permanent or temporary) from a transgender employee in a public facing role, if requested by said member of staff.

10.5. Absence from work
People who are undergoing gender reassignment and need time off work for this reason can take the time as sickness absence. As for any sickness absence, employees should discuss with their line manager any requirements or adjustments they may need for their return to work.

10.6. Disability
If the person has gender dysphoria and the condition has a substantial and long term adverse impact on their ability to carry out normal day-to-day activities or because of a consequence of disability, they may be protected under the provisions in the Equality Act 2010, relating to the protected characteristic of disability, and this practice will manage their employment accordingly.

10.7. Remuneration and benefits
Employees who have obtained a gender recognition certificate may be entitled to pension benefits or other insured benefits relating to their acquired gender.

10.8. Dress codes
Transgender people who dress in clothes appropriate to their gender identity, as part of the process of reassigning their gender, will be supported by their line manager if they wish to make a change in their work attire. Transgender people are able to wear clothing appropriate to their expressed gender identity when they are ready to do so.

10.9. Toilets and changing rooms
If there are single-sex facilities managers must ensure that the employee can use those which are appropriate to their expressed gender identity without fear of harassment. Changing rooms will have a private area so that people do not have to change in front of others.

10.10. Returning to work after transition
When a transgender person returns to work after transitioning into their new gender identity, the practice will support the employee to transition back to work. This includes changing
email addresses, name badges, other ID, and distributing any agreed communications as soon as is reasonably practicable.

11. Grievances, performance improvement and disciplinary action

An employee who believes that they have a complaint should report it as soon as possible. This allows the issue to be investigated and, where necessary, remedial action to be taken. Where appropriate, issues will be managed under the practice’s performance improvement or disciplinary procedures.