



UK Transgender Law: Factsheet 01

CHANGING NAMES & CHANGING LEGAL GENDER

A Guide to UK Law for Organisations, Employers
& the Transgender Community

Prof. Stephen Whittle, OBE, PhD, MA, LL.M, BA



Press for Change
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The UK's Leading Experts on Transgender Law

Press For Change: Seeking Respect and Equality for ALL Trans people

UK Transgender Law Factsheet 01: Changing Names & Changing Legal Gender: A Guide to UK Law for Organisations, Employers, & the Trans Community

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Employers, & the Transgender Community**

Professor Stephen Whittle, OBE, PhD, MA, LL.M, BA



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About the Author

Stephen Whittle OBE, PhD, MA, LLB, BA is Professor of Equalities Law at Manchester Metropolitan University where he has taught for 20 years. Stephen transitioned from female to male in 1975. In 1992, he co-founded Press For Change (PFC), the UK's transgender lobbying group in 1992. PFC took many cases to Europe & in 1995, *P v S* (European Court of Justice) provided employment protection for Trans people in Europe. In 2002, the cases of *Goodwin & I v United Kingdom Government* (European Court of Human Rights) led to the Gender Recognition Act 2004 and the right for Trans people to obtain legal recognition of their preferred gender role.



Stephen became a stakeholder advisor to the UK Govt. for the Act & in 2007 was appointed to the Equalities Review (ER) to advise on trans issues.

As principle researcher, he worked with Dr Lewis Turner to draw up the ER's Trans study, which resulted, in the Equality Act 2010, in the provision of full protection from discrimination or harassment for Trans people in employment and when accessing goods and services.

Stephen has advised on transgender law to the UK, Irish, Italian, Japanese, and South African governments, the European Union, the Council of Europe, and the European Commission. He advises lawyers and writes briefs, or is an expert witness, for courts worldwide.

Stephen has received numerous awards for his work, including in 2007 the Lambda Literary Award for 'The Transgender Studies Reader' (with Susan Stryker, 2006, New York: Routledge) and in 2002, the Sylvia Rivera Award from the Centre for Lesbian & Gay Studies at the University of New York for 'Respect and Equality: Transsexual and Transgender Rights' (2000, London: Cavendish). In 2002, he received the Law Society/Liberty/Justice Human Rights Award from the UK's Human Rights Legal Profession, and in 2012 he received the Frank Kemeny Life Time Achievement Award (2010) from the North American LGBT Bar Association. In 2014 He was awarded the American Bar Association's Stonewall Award for his contribution to LGBT rights and the education of young lawyers. He also received an Honorary Doctorate in Laws from Sussex University. In the 2005, Queen's New Year's Honours list he was made an Officer of the Order of the British Empire (OBE, 2005) for his work on gender theory and rights.

*'I think that this **Factsheet** is a must read for all College Equality Managers. It is a comprehensive document that clearly sets out equality legislation in simple terms and offers valuable advice and guidance supported with helpful examples.*

I feel happy that I now have the knowledge to ensure that our College provides best practice when supporting our learners and staff through this transitional process."

Michelle Preece, Learning and Development Manager, Derby College.

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Pt. 1. GOOD ENOUGH, OR GOOD ADVICE?

Many organisations, who want advice or information, make a very common mistake.

They think it will be **good enough** to consult with the one transgender employee, or customer, or client, or patient, they have.

It is NOT good enough

Poor advice leads to the development of inadequate policies, which result in poor practice, leading to unpleasant court cases, costs and damages.

EXPERT ADVICE makes light of what otherwise can become massive difficulties.

CHOOSE AN EXPERT - NOT SOMEONE JUST 'GOOD ENOUGH'.

POOOR ADVICE leads to poor practice. As a voluntary organisation, **Press for Change** (PFC) has limited capacity, yet we are now receiving more requests for help than ever, from Trans people who are facing unlawful discrimination.

Just because a person is Trans, does not mean that they will have spent their life becoming an expert in transgender lives and issues.

In the past, most Trans people wanted to safely and quietly transition into their preferred gender role, and then get on with their lives without most people knowing their medical history.

Increasingly though, some Trans people feel those 'safe' choices led to isolation, a sense of shame, constant worry of 'being found out' and the consequent damage to health that anxiety brought. Instead, some Trans people are choosing to be out and proud about their gender history.

However, **being visible, being out or being proud will not make them a legal expert.**

Most Trans people trust Press For Change to have expert knowledge about the law, and their rights. **We would be grateful if you did the same.**

In PFC, we believe it is rare for anybody, other than lawyers, to benefit from

going to court in cases involving Trans people. Court cases mean Trans people risk unwanted media intrusion in what are very private matters.

PFC works to prevent unnecessary visits to court, by ensuring organisations receive accurate advice and that expert training is available, so that problems can be speedily resolved at little cost.



With correct, accurate advice & support, Trans people are able to live life to full, contributing as best they can to the organisations they work and volunteer for, and to the society they live in. For them, after a lifetime of struggle with the most crucial and intimate part of their identity, achieving that is often more than enough.

Pt. 2. GLOSSARY

Gender Identity: We all have a Gender Identity. Gender identity is the psychological recognition, a person's internal perception, of being a person with (or without) a gender. This may or may not be the same as the gender assigned to the child at birth. It is now increasingly recognised that gender identities can take many forms, for example, man, woman, trans man, genderqueer, etc. and that some non-western cultures have historically had more than two available gender identities. Gender identity is often conflated with sex, however they are different concepts, sex refers solely to whether a person (or animal) is biologically **male, female or intersex**.

These are key terms and their meanings. Using these terms wisely will help transgender people feel more welcome in your organisation.

Cross Dressing: In children, and young adults, cross-dressing can be an indicator of the development of a transgender or transsexual identity. Both boys and girls may cross dress. Girls can wear more easily unisex style clothing, which closely resembles boys clothing without ostracism, whereas it is usual thought that most boys who wear unisex clothing or girl's clothing have a mental health problem or a sexual perversion. Frequently, boys face severe punishment for this behaviour whereas girls will usually escape punishment. During puberty, many

boys who cross dress will discover a sexual element to the practice, whereas it is rare for girls to do so. Increasingly there is an understanding that both behaviours can be an early indicator of the development of a transgender / transsexual identity.

Gender Dysphoria: Gender Dysphoria (see Gender identity disorder) Gender Dysphoria is the diagnostic requirement before a person can apply for a Gender Recognition certificate.

Gender Identity Disorder: Gender identity disorder) (GID) is the formal diagnosis used by psychologists and physicians to describe persons who gender identity is different from that ascribed to them at birth. Essentially it is a medical description of the condition of being transgender or

transsexual.

Gender Reassignment: Gender reassignment refers to:

- the social process when a person commences living in their preferred gender role and identity, and
- the medical processes by which a transsexual person makes physical changes to their secondary sexual characteristics, in order for their body to more closely resemble that of a person who normally presents with their preferred gender role and identity.

Gender Recognition certificate: (GRC)
A Gender Recognition certificate is the notification that a person has had their preferred gender recognised in UK law as their gender(sex) for **All legal purposes** including marriage and civil partnership.

Gender Reassignment Surgery (GRS):
Refers to surgery to alter the sexual or other characteristics of the body so that it better resembles that of a person of the other sex, and is only one small part of transition (*see Transition* below). Term now used instead of 'sex change operation' or 'sex reassignment.' Not all Trans people can have gender reassignment surgery, for health or financial

reasons, some will choose not to undergo part or all of the possible gender reassignment surgery available.

Gender Role: Gender role refers to the personal social presentation of those aspects of the self, including behaviours, thoughts, dress and mannerisms expected and used by others to determine whether a person is feminine, masculine, or androgynous. The portrayal of one's gender role is usually the way a person presents themselves to the world as a man or a woman.

Gender Variance or Variantt: when discussing children who express a wish to change their gender, support workers and professionals in the field use the term gender variant or variance to describe the gendered 'sense of self' that young people have. Gender variance: (or) variant is used in order to ensure that young children who have cross gender behaviour are not given the 'surgical goal driven' label of being 'transsexual'. 'Transsexual' assumes a desire for body altering medical intervention. When children and teenagers are still in their developmental stages of life, and their expressed gender identity is still potentially subject to change, it is important to give them the freedom

to change their expressed gender if appropriate. Gender variant has become the accepted term for those children who express a desire to be a member of the opposite gender, or of neither (agender) or of both genders (bi-gender or genderqueer).

Transgender: An umbrella term (adj.) for people whose gender identity and/or gender expression differs from the sex assigned at birth. The term may include but is not limited to; transsexual people, people who cross-dress and other gender-variant people. Transgender people may identify as female-to-male (FTM) or male-to-female (MTF). In the UK it is usual to shorten the term to 'Trans'. Trans people may or may not decide to alter their bodies hormonally and/or surgically.

Trans man / Trans men: People born female bodied but who have a gender identity like that of a man.

Trans woman / Trans women: People born male bodied but who have a gender identity like that of a woman.

Trans people: Members of the Transgender Community.

Transphobia: Transphobia is an emotional disgust leading to an irrational reaction toward individuals who do not conform to the socio-

cultural ideology or norms of gender conformity. Stigmatising attitudes, such as homophobia or transphobia, usually occur when a person's physical appearance as a man or a woman is at odds with their gender role presentation. People who are visibly gender different, for example those who:

- have just commenced transitioning to their preferred gender role, or
- who do not 'pass' as a member of their preferred gender, and
- non-Trans people who do not conform to a cultural norm of gender,

are more likely to experience transphobia. Transphobia leads to social exclusion and ostracism, verbal and physical harassment, criminal assault and in the most serious cases, has resulted in the murder of the person and those who associate with them.

Transsexual Person: Transsexual is a term originating in medicine and psychology. While some transsexual people still prefer to use the term to describe themselves, many people now prefer to use the term **trans** rather than transsexual.

Unlike transgender, transsexual is not an umbrella term, as many transgender people do not identify as

transsexual. **It is best to ask which term an individual prefers.**

A transsexual person will usually seek medical and/or surgical reassignment treatments, if available, which change the secondary sexual characteristics of their body to more closely resemble that of a person who has the preferred gender identity ascribed to them at birth.

Transvestite: (see *cross-dressing* above) Often used in a derogatory way to refer to a person who occasionally, for shorter or longer periods, wears the clothing usually worn only by people of the opposite sex. In adulthood, cross-dressing is most often a activity of heterosexual men who do not wish to live in the opposite sex or gender role. It is a common activity, with figures of between 1 in 10 and 1 in 100 men cross dressing during some periods of their life. When younger it will often have a sexual element however, as they age for most cross dressers it becomes a social activity, or a form of comfort and a stress relief. Some men will cross dress throughout their life. Most will not wish to undergo gender reassignment. However, it can be a precursor to a child or an adult declaring a trans identity. Occasionally a child or adult who has never previously cross dressed may

declare a trans identity, the fact that they do not have a history of cross dressing does not indicate that there strength of certainty is any less, and their transition to living as a member of the opposite sex can be just as successful.

Transition: Transition is a process. It starts on the day a child or adult commences living either partly or permanently in their preferred gender role, with the intention of permanently doing so either now or at some point in the future, for the remainder of their life. Transition includes some or all of the following personal, legal and medical adjustments: telling one's family, friends and/or co-workers; changing one's name and/or gender on legal documents; hormone therapy; and possibly (though not always) one or more forms of surgery.

Transition ends when the person has completed, what will be for them, all of the processes including any medical treatments, of gender reassignment. It can take many years for most people to complete transition.

Pt. 3. WHO THIS GUIDE IS FOR?

3

A transsexual woman, who had been embroiled in several months of discussions about changing her name and gender on her bank account, said:

“we need a simple but comprehensive guide to prevent middle managers ‘making it up on the spot’.”

This is that simple, but comprehensive guide.

This guide is for managers and administrators in all types of organisations to enable them to understand the processes, and their legal obligations when a transgender or transsexual (trans) person approaches them to request recognition of a change of name or gender in their records.

This Guide will also help Trans people with practical advice about the law, as it relates to their employment, and when accessing goods, services, housing and facilities. It explains the key rights they have in relation to name, pronoun and legal gender change, and how to approach organisations to successfully achieve organisational recognition of their legal rights.

This guide advises employers and other organisations about their legal obligations in their relationships with Trans people, either as employees or as service users, or customers **and:**

- The Equality Act 2010
- The Gender Recognition Act 2004,
- The Human Rights Act 1998, and the European Convention on Human Rights,
- The legal rights of Trans people change their names, titles, pronouns and gender,
- What organisations must do when a Trans person requests recognition of their change of name and gender pronouns, and
- What organisations must do when a Trans person requests that their legal change of gender is recognised.

Pt. 4. THE LAW & GENDER REASSIGNMENT

This section provides a clear guide to the current relevant legislation that details the law as it relates to transgender and transsexual (Trans) people

4

4.1. THE EQUALITY ACT 2010

4.1.a. Discrimination, Harassment and Victimisation

ORGANISATIONAL OBLIGATIONS under the **Equality Act 2010** arise at the point when a person **INFORMS** the organisation that:

- They are intending to undergo, or
- They are undergoing or
- They have undergone Gender reassignment.

The Act ensures that Trans people are afforded Protection from discrimination and harassment **in Employment**, and whilst **accessing Goods, Services, Housing or Facilities**.¹

There is also protection from **Harassment, Association, and Victimisation**, even when the person is not trans, but there is a **Perception** that they are trans.

The Act protects Trans people from:

DIRECT DISCRIMINATION which means treating a person unfavourably, or detrimentally, compared to others, because they are Trans.

INDIRECT DISCRIMINATION which means putting in place a rule or policy or way of doing things that has a worse impact on someone who is Trans, when this cannot be objectively justified.

¹ There are exceptions, but they will only apply in the very rare circumstances, for example where the employer is the armed services, or an employer or service provider provides only single sex services.

HARASSMENT which includes any unwanted conduct related to a person's Trans status which has the purpose or effect of violating their dignity or which creates a hostile, degrading, humiliating or offensive environment for the Trans person.

ASSOCIATION, which is when a person is treated unfavourably because they are in some way associated with a trans person

VICTIMISATION which is treating a Trans person, or someone associated with a trans person, unfavourably because the Trans person has taken (or might be taking) action under the Equality Act, or for supporting a trans person who is doing so.

PERCEPTION / PERCEIVING someone as being Trans (viewing a person as someone who is having a 'sex change') and treating them in any of the above ways is also unlawful, even if the person is not intending to undergo or has not undergone gender reassignment treatment.

EMPLOYERS AND SERVICE PROVIDERS must ensure that have the responsibility to ensure their **workforce is trained** and has the tools whereby they can ensure that Trans people are treated, according to the Law.

4.2. THE EXTENT OF PROTECTION IN THE EQUALITY ACT 2010

The **Equality Act 2010** ensures that Trans people are afforded Protection from discrimination and harassment in

- **Employment, and**
- **whilst accessing Goods, Services, Housing or Facilities.**²

Employers and service providers must ensure that have the responsibility to ensure their **workforce is trained** and have the tools whereby they can ensure that Trans people are treated, according to the Law.

² There are exceptions, but they will only apply in the very rare circumstances, for example where the employer is the armed services, or an employer or service provider provides only single sex services.

4.2.a. Absences from Work for Gender Reassignment Treatments

The Equality Act 2010, Part 2, Chapter 2, Discrimination, Section 16; Gender Reassignment Discrimination: Cases of Absence from Work makes it **unlawful discrimination** to refuse Trans people the time off to pay them sick pay during the time required for their gender reassignment treatments.

Section 16 makes it unlawful to discriminate in relation to absences relating to a trans employees gender reassignment, by treating them less favourably than they would be treated for absence for reasons of sickness or injury, or any other reason.

For example, it would be unlawful to refuse a (female to male) trans man permission to arrive a little late for work, once a fortnight, because he has to visit his doctors during the nurse's treatment clinic for his hormone injection, if another employee was allowed to take time away from work to attend a college course.

If the refusal to allow the trans man time to attend for his injection meant he could not receive his gender reassignment treatment, it would be unlawful discrimination under the provisions of **s.13 of the Act, Direct discrimination** as it would be treating a person less favourably to their detriment by reasons of a person's gender reassignment. It would definitely be unlawful discrimination, if an employer would allow a woman, for example, regular late attendance whilst she was undergoing treatment for infertility, kidney dialysis, or any other illness in which there were specific clinic times.

4.2.b. The Public Sector General Equality Duty

The Public Sector General Equality duty contained within the Equality Act 2010 requires all Public Sector Bodies to give due regard to

- Eliminating unlawful discrimination, harassment and victimisation including towards transgender people
- Advancing equality of opportunity between different groups, including transgender people
- Fostering good relations between different groups, including transgender

people

They should do this by giving due regard to:

- **removing or minimising disadvantages** suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- **taking steps to meet the needs** of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- **encouraging persons who share a relevant protected characteristic to participate in public life** or in any other activity in which participation by such persons is disproportionately low.

4.2.c. Same Sex Services

SCHEDULE 3, Part 7, Section 28 of the Equality Act allows those organisations, which provide a service to one sex group only, e.g. a Rape Crisis centre, a Men's health clinic or a Women's Refuge, to refuse to employ a Trans person, or provide services to a Trans person.

They may only do this, if they can provide evidence that they can **objectively justify** that their actions are a **proportionate and legitimate response** to the question of the person's employment or their using the services, and which explains why the organisation has a particular need to exclude Trans people.

For example, a Refuge providing services to women escaping domestic violence, may feel they have a need to exclude trans women from using their services, because of the experience other women who are clients have had with men. However, it should not be assumed that clients would not be able to live alongside a trans woman who had also been a victim of domestic violence. At the very least, the organisation should consider asking their other clients if they would be willing to do so. If women share rooms, then consideration should be given as to whether a single person room could be found for the trans woman. If there is no single person accommodation, then consideration should be given to asking one of the women who are clients if they were willing to share with the trans woman.

Employers and service providers **need to explore all options** before making the decision that they cannot employ or provide a service to a trans person. If they do not, they may find they have discriminated unlawfully.

4.3. THE HUMAN RIGHTS ACT 1998

There are further legal requirements placed upon all employers who are Public sector bodies or who are doing the work of a Public Authority. These are legal obligations of the state and arise through **The Human Rights Act 1998** which embodies the **European Convention of Human Rights** into UK law.

Human Rights are individual rights which are held by virtue of residence in a state which is a signatory of the UN Declaration of Human Rights and the European Convention on Human Rights. Human Rights are rights which can be claimed against the state or any organisations which are an emanation of the state, which includes government departments, Local authorities, and other Public sector bodies including state funded schools.

Public Sector bodies are those organisations, which are part of government, or of local authorities or those bodies in receipt of state funding to perform an act of the state.

These organisations must ensure that what they do does not contravene the individual Human Rights of their employees, customers or clients, e.g. nurses and patients in hospital, teachers and children in a school. One of the easiest ways of understanding the full range of Human rights, that each person, including children, has under the Human Rights Act and the European Convention, are what are known as the **FREDA PRINCIPLES**.

4.3.a. Ensuring Human Rights

The **Human Rights Act 1998** requires that all people resident in, or citizens of, the United Kingdom are afforded their core Human Rights as embodied in the European Convention on Human Rights (the Convention)

The **FREDA principles** inform the idea of Human Rights as qualified under the

Human Rights Act 1998.

The Principles are a very useful tool in determining whether a person's human rights have been contravened. The **FREDA Principles** afford everyone the right to be treated with

- **Fairly**, with
- **Respect** and
- **Dignity** at all times, so as afford effective
- **Equality**, whilst recognising their right to their personal
- **Autonomy** as to their personal development and identity

The **FREDA Principles** require all of those people who work in a Public Sector Body, including state schools, and any sub-contractors (e.g. a receptionist from an agency) who work with them, to respect the Human Rights of others, and to perform their Public Sector Duties as contained in the Equality Act 2010 (see above).

Pt. 5. Changing Names & Pronouns

Part 5 provides information on how a Trans person can lawfully change their name, and the legal obligations of other organisations to recognise that change, and associated gendered titles and pronouns.

The explanation below uses the term First Name to include middle names and it also refers to names otherwise referred to as a person's

- forename,
- given name,
- personal name, or
- Christian name.

The term Surname is used to include those names otherwise known as a person's

- last name,
- second name (if not the middle name), or
- family name,

and includes the term maiden name, which is the pre-marriage surname of a woman before she took her husband's surname.

5.1. CHANGING NAMES

In the UK, initially when a Trans person 'transitions' to living permanently in their preferred gender role, they are able to change their name and gender on almost all of their public and private records. This includes their driving licence, their passport, their medial and workplace records etc.

The only exceptions at the time of transition are the person's birth certificate, any criminal records (see **Part 9**), and the gender marker for their HMRC National Insurance and Tax records.

A Trans person can ask an employer or service provider to change their name and gender on their employee and personnel records simply by notifying them

of:

- their intention to transition, and
- informing them of their name change: this is usually done by providing a Statutory Declaration of Name and Gender Change, but this is not a legal requirement.

Using a **Statutory Declaration of Name and Gender Change** (see section 5.2.1.) or simply by **Custom and Practice** a Trans person may change their name, including their surname, and their gender and therefore the pronouns appropriate for their preferred gender role.

MOST use a Statutory Declaration because it has **LEGAL STANDING** with government bodies such as HMRC.³

This provides all of the evidence required by any organisation for a change of all the Trans person's public and organisational records

The only exception **MIGHT** be an employer's pension records, which may need to remain unchanged until national pension ages are equalised.

A person's country of birth is irrelevant; ANY person can use a statutory declaration to change their name and gender for use in the UK.

When a Trans person presents an organisation or employer with a Statutory Declaration of Name Change or other proof that a change of name has been made through custom and practice (proof might include items such as a rent book, bank statement etc), **CHANGES MUST BE MADE** to a person's:

- gender titles (Mr, Mrs, Miss, etc.);
- gender pronouns (He, She, etc.); and
- names, and gender markers on ALL records.

THIS INCLUDES MAKING CHANGES TO ALL MEDICAL RECORDS -

FAILURE TO MAKE THESE CHANGES WOULD CONSTITUTE UNLAWFUL DISCRIMINATION.

³ They can also use a deed poll, but PFC advises against this as it is often more expensive, and it does not carry the same weight in law as it is not a sworn document.

Many Trans people will also provide a letter from their GP or Consultant explaining the change including stating the change is intended to be permanent, however since the Equality Act 2010, this is no longer a legal requirement.

On transition to **LIVING PERMANENTLY IN THEIR PREFERRED GENDER ROLE**, a **Statutory Declaration of Name Change** will allow a Trans person to change their name and pronoun on every public record (and many private records) about them, apart from their birth certificate and the gender marker on their HMRC National Insurance and Tax records.⁴

It is not appropriate for employers or service providers, **including GPs and other medical practitioners** to retain details of a person's former name or gender, unless the person is a member of an employer's pension scheme with differential benefit ages – these are now very rare. Most schemes have 'set ages' e.g. at which both men and women to receive pension benefits at.

The Inland Revenue (HMRC) have their own system to keep a tally of Trans people's state pension records, so employers do not have to worry about retaining the person's former details in their records, or about including the person's former name or gender in their tax returns.

On the day of transition: a **Trans employee OBTAINS ALL RIGHTS** as a member of their preferred gender role for **ALL workplace matters** including employment rights, pay and pensions.

5.2. NAME CHANGES AND THE LAW

It is **UNLAWFUL** for a person to use a different name in order to defraud or impersonate someone.

Otherwise, in UK Law, any person is entitled to use whatever first name(s) they wish and they can change their first name(s) at any time without using any formal mechanism. The rule for changing a Surname is slightly different if the person is a child under the age of 16.

⁴ If the person is claiming benefits, their records can be given a high security rating, so there is no chance of Mr. Sarah Smith being publicly called for over the Job Centre tannoy.

Formal mechanisms for changing names do exist (see below) but they do not have to be used - a name can be changed simply through usage (by what is known as custom and practice), except in the case of the surname of a child under the age of 16.

5.2.a. Name Changes & Children under the age of 16

A child can change their first name through custom and practice. But unlike any person who is 16 or older, a child under the age of 16 requires the permission of all people who have parental responsibility to formally change their Surname for official purposes.

i.e. Changing the Surname of a child under the age of 16 requires the permission of ALL PEOPLE WHO HOLD PARENTAL AUTHORITY.

Other than a name not being used solely for fraudulent purposes, this is the only legal requirement that exists about changing a person's name, It is to ensure that one of separated parents don't change a child's Surname in order, for example, to prevent a non-resident parent having access to their child.

Changing the Surname of a child requires **ALL parties with parental responsibility** to attend at a notary's office (normally a local solicitor's firm) and **jointly swear a Statutory Declaration of Name Change.**

5.3. CHANGING A NAME

A person who is over the age of 16 has an absolute right to change any or all of their First names or Surname. **This can be done in any of three ways:**

- By Custom and Practice i.e. simply using the name until everyone accepts it is your name, or
- By making a **Statutory Declaration of Name Change**, or
- By making a Deed Poll (this is not advised)

5.3.a. Why Use a Statutory Declaration Rather than a Deed Poll?

Most Trans people will use a Statutory Declaration of Name Change as

- it can be done very cheaply - for as little as £1 by an official of the court, or £7 at the office of a notary public (usually a local solicitor)
- it is an official and verifiable document
- it can later be used as part of the proof of the date of changing to live in the preferred gender role when applying for a Gender Recognition certificate

The Gender Recognition Act 2004 requires Trans people to change their name and gender pronouns **at least 2 years in advance** of formally applying to change their legal gender

- Unlike a Deed poll, a Statutory Declaration of Name Change is a written statement of fact and a legal document as it has to have been verified and signed by one of the following:
 - a Solicitor
 - a Notary of the Public
 - a Justice of the Peace
 - a Commissioner for Oaths
 - a Councillor (Scotland only. Documents on or after 10/12/07)
 - any other qualified person, including a solicitor with a current practicing certificate.

5.3.b. Who Else Can Sign a Statutory Declaration

Under the provisions of section 81 of the Solicitors Act 1974, solicitors in England and Wales holding a current practising certificate have the same powers as a Commissioner for Oaths for the purpose of authenticating a Statutory Declaration.

Officers of the armed services with the rank of Major, Lieutenant-Commander, or Squadron Leader, and above, and British Diplomatic and Consular Officers in post abroad may authenticate a Statutory Declaration. For change of name purposes, where an application has been submitted with a statutory

declaration, this can be accepted **providing that the statutory declaration has been signed in the new name.**

Some statutory declarations may be signed in both the old and the new name; these are also acceptable.

If the statutory declaration is only signed in the old name, then a request will be made, for example by the Passport office or HMRC, for the person to obtain a new statutory declaration showing a signature in the new name.

It is a legal requirement that statutory declarations made contain the wording below. If a statutory declaration is received where this wording is not included, it will not be acceptable for passport purposes:

I (name) do solemnly and sincerely declare, that/as follows.. . . . and I

make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835.

See examples of legal Statutory Declarations in Part 7 of this guide.

5.4. HOW MANY NAMES CAN A PERSON HAVE?

In the UK, it is lawful to have as many names made up in whatever way, as a person wants. They can be hyphenated such as Jane Smith-Jones, they can be separate, for example, Jane Smith Jones. They can be a professional name, typical of artists and many professional women.

The use of more than one name is common in everyday life. For professional reasons some people may have a business name and a personal name. Entertainers often do this, and increasingly many professional women choose to use their maiden name in work, whilst using their married name at home.

Similarly, for those Trans people who are part time cross dressers (transvestites) or who are commencing the long road to fully transition into their preferred gender role (transgender or transsexual) there may well be a need for flexibility. Just as John has a male identity including a bank account and credit card, so can Joanne, his alter ego, have a female identity including a bank account and credit card. They could be vital to John taking a weekend break to practice and see

whether Joanne wants to take the next very big step to commencing full gender reassignment.



HOW MANY NAMES? Cherie Booth, Barrister and Cherie Blair, a politician's wife are a couple of such name changers. Ms Booth is a high flying professional who travels the world. She has a passport, a national insurance number, a Tax id, a successful law practice, and mega-earnings. Mostly seen wearing smart business suits and a judge's wig..

Mrs Blair is more a stay at home mum. She has a driving license, a husband, and several children. Mrs Blair can be found more often in jeans and a T-shirt, though she can scrub up well when she shows up at her husband's business events in a designer frock.

However, both women share the one NI number and have only one personal tax allowance between them..

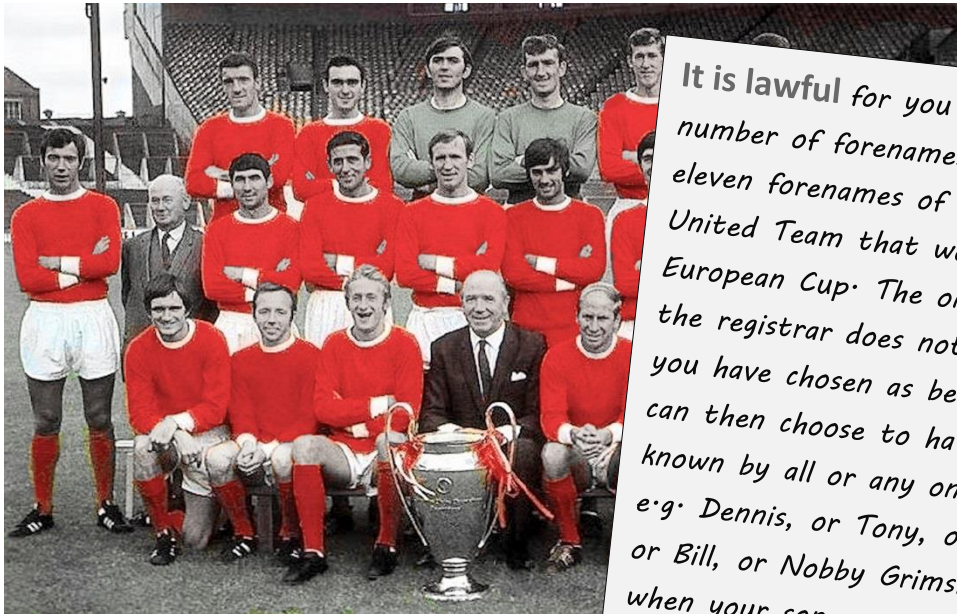
5.5. WHAT NAMES CAN A PERSON CHOOSE?

Any person can change their name to anything they like as long as they are not changing their name to commit illegal activities i.e. fraud.

The only basis for disputing an adult's chosen name is if the name is intended to be used **for fraudulent purposes**.

It is NOT fraudulent for a Trans person to have their new name and gender pronouns recognised in the public arena and workplace to match their public identity, in the years before they qualify for changes to their birth certificates under the Gender Recognition Act 2004. In fact, it is GOOD PRACTICE and usually required by the clinicians who will eventually say whether the person can proceed to gender reassignment surgery.

A person can have any name they choose so long as it is not considered obscene by the Registrar General.



It is lawful for you to give your child any number of forenames for example, all eleven forenames of the Manchester United Team that won the 1968 European Cup. The only criterion is that the registrar does not consider the names you have chosen as being obscene. You can then choose to have you child be known by all or any one of those name e.g. Dennis, or Tony, or Pat, or George, or Bill, or Nobby Grimshaw. However, when your son grows up to be a Manchester City supporter, at 16 he instead might choose to be simply known as Tom Smith.

SUMMING UP: Name Changes

It is not up to any organisation, other than the courts, to decide a person is using a name for fraudulent reasons. That is a job for the police and the courts.

A person who does use more than one name must be consistent, and honest, in their use of their names in whatever spheres of life they use it in, so as not to seem to be acting fraudulently.

Using one or more names is lawful, and does not require any formal paperwork or process, other than usage.

- A person can have 2 or more lawful identities at the same time.
- A person can have as many names in their name as they want.
- A person can hold bank accounts in one or more names.

- A person can change their pronouns and names on proof of common usages, or by statutory declaration, or by deed poll.
- A person can have as many names, with whatever gender pronouns they prefer so long as it is not for fraudulent purposes.

All of this is lawful.

5.6. THE LAW: CHANGING TITLES

6

A Trans person usually chooses to change their ordinary title when they commence transitioning to living permanently in their preferred gender role.

All organisations and Official Representatives of organisations whether an employer, or a public sector body, a local health care practice, a college, their social worker, their gym, their hairdresser, their butcher etc. **MUST respect that change.**

Failure to do so will amount to **DIRECT DISCRIMINATION UNDER THE EQUALITY ACT 2010.**

Ordinary Titles, (Mr, Mrs, Miss, Ms, Master). are not, in any way, controlled by UK law and are simply a matter of custom, practice and good manners.

Only Inherited, Appointed or Merit Titles; e.g. Lord, Lady, Baroness, Sir, Professor, Dr. etc. are a matter of Law

A failure to recognise the change of ordinary titles by a **Public sector organisation** would also amount to:

A contravention of Article 8 of the European Convention (the Trans person's right to a private life), and

A contravention of the Public Sector General Equality Duty in the Equality Act 2010.

5.6.a. Merit, Appointed and Inherited Titles

If a person has a non-inherited title e.g. a Life Peer in the House of Lords, an

academic doctor (a Ph.D.), a medical doctor, or a Judge of the Supreme Court, then if the title has a 'gendered' form it is usually up to them how they wish to be known. They must use the appropriate title for the gender, but only of the same level. For example; Sir Rob Roy would become Dame Rachel Roy, and the life peer Lady Susan Smyth would choose to be known as Lord Stephen Smyth.

If a person has an inherited peerage i.e. an Inherited Lord, Lady, Baronet, Viscount, etc. technically the title does not change when the person transitions to their preferred gender role, only when they have full legal recognition in their preferred gender – something which normally will not happen for a further two years.

However, **it would be usual to use the most GENDER APPROPRIATE title in public.** Nonetheless, that will not affect any matter of inheritance including the descent of the title, or the devolution of land or other property, unless the intention not to allow property to pass normally is made **very clearly** in a will.

or example, to ensure that his son Johnny gets his cricket bat, David wrote his will to read, "I give my cricket bat to my eldest son." However, David's older daughter, Helen has now changed legal gender from female to male and so become the eldest son, Harry. David should now alter his will to read, "I give my cricket bat to my son Johnny" and "my golf clubs to my son Harry."

When the person with the inherited title legally changes their gender and obtains a Gender Recognition certificate, their **title will formally change**, but the Gender Recognition Act ensures that upon their death, the title will return to its normal inherited form. For example:

the Viscount of Arbuthnott is normally referred to as Lord (George) Arbuthnott. Normally the title passes through the male lineage. On transition, George becomes Georgina, and she is known as Lady Georgina, but she is still, for legal purposes, the Viscount of Arbuthnott.

When she receives her Gender recognition certificate, she becomes Lady Georgina, Viscountess of Arbuthnott. But upon her death, the title of Viscount of Arbuthnott – which normally passes through the male line - will still pass to the eldest son of George/Georgina. That son may have been born to George's wife when he was married, before he had changed his gender, or may have

been adopted by Georgina since her transition to living permanently in the female gender role.

Summing Up: Titles

The Gender Recognition Act 2004 makes it quite clear that once a person has a Gender Recognition certificate as the change of gender is for ALL purposes, including legal purposes. As such there will be a change to the title of the person who obtains a Gender Recognition Certificate.

On TRANSITION:

- Mr Tom Jones will become Miss or Ms or Mrs Tracy Jones
- Miss Tina Turner will become Mr Ned Turner
- Dr. Richard Kildare will be Dr. Rachel Kildare
- The surgeon who is known as **Miss Sally Turner** will become **Mr Stephen Turner**.

Lord Larry Fautleroy, inheritor of the title, may be called **Lady Lorraine Fautleroy**, but for **legal purposes** she is still technically Lord Lorraine Fautleroy. However, **on legal recognition of her change of gender**, Lord Fautleroy will now be Lady Lorraine Fautleroy for all purposes including legal purposes.

5.7. PRONOUNS: S/HE – HIM/HER – HIS/HER – THEY

The pronouns; **she or he, him or her, his or her**, exist entirely through customary use and practice. There is no legal requirement to call anyone by any particular pronoun, but not call someone by an appropriate pronoun can be discrimination, manifestly showing your prejudice, or be just plain rude and bad behaviour. 'They' and 'their' are very useful terms if you are not certain which gender someone is presenting in. However, if a person has made their gender identity clear – either by their personal presentation or by telling you their name – then it can be very affirming to the person if you use the appropriate gender pronoun.

Pt. 6. THE TRANSITION PROCESS

TRANSITION commences when a transgender or transsexual person starts the process of living permanently in the preferred gender role, usually prior to any Gender reassignment surgery. It often commences on the day the Trans person first goes to work or College in their preferred gender role.

A period of one to two years of transition is normally required before a psychiatrist will agree that the Trans person is ready to undergo Gender reassignment surgery.

During the period of 'medical' transition required by clinicians, the Trans person will be required to live permanently in their preferred gender role, and to be in full time work, or be a full time student, or be a full time volunteer – or any combination of these if part time, before they will be considered for surgery.

6

6.1. FOR EMPLOYERS: PREPARING FOR AN EMPLOYEE'S TRANSITION

A person will usually notify organisations of their name change and their intention to change their name at a point when they are ready to **TRANSITION**. Trans people (usually) change their name by swearing a **Statutory Declaration of Name Change** (or a Deed poll of name change).

But this is **NO LONGER** a requirement.

Name changes can be achieved simply through custom usage and practice (see below).

Trans people are advised to speak to their employer some time before their change of gender. Numerous matters will benefit from discussion beforehand. It can make a significant difference to whether a person's change of gender within their employment is successful, by jointly preparing the process in advance.

This should start with discussing the employee's proposed timetable of preparations for the day when the employee will come to work in their

preferred gender role. The day and date of presenting in their preferred gender role is of the employee's choice, but PFC recommends it be a joint decision, to ensure that there is agreement on the plans. This can make all the difference to whether other employees are prepared and know what is required of them by the law and the employer.

Transition in the workplace can be very frightening, but done well it can be a joyful event for ALL Concerned.

6.2. PLANNING FOR TRANSITION IN WORK

6

Under the provisions of the **Equality Act 2010**, organisations, including employers or service providers **MUST RESPECT A PERSON'S CHANGE** of name, and their decision to transition to living in their preferred gender role. Failure to respect the change of name or pronoun, or transition, will constitute **direct discrimination** under s. 7 of the Equality Act 2010.

The Trans person will usually provide a **STATUTORY DECLARATION OF NAME CHANGE**, but **they are not obliged to. A lawful change of name can be done through custom and practice.**

The Trans person may also provide **A DOCTOR'S LETTER** confirming that they are undergoing treatment for gender reassignment. This **used to be a compulsory requirement**, and public bodies such as HMRC, or the DVLA would require a doctor's letter before they would change a Trans person's name and gender on their records. However, the **Equality Act 2010** has made it clear that a person's transition is a **SOCIAL PROCESS** and not necessarily a medical process, and consequently, a doctor's letter is no longer required before changes to a person name and gender are made on their public records.

As the employer, you would change the name, title or pronouns on your paperwork for a person who marries or gets divorced. As such, then you must do the same for a person who is commencing the process of gender reassignment.

If you are the employer of the Trans person, your plans for an employee's transition should include:

- Detailed preparations for the day when the employee comes to work in their preferred gender role,
- When, and how, to tell other employees of their colleague's change of gender.
- Whether there should be some training of senior management in order that they can ensure all staff are aware of their legal obligations and the transitioning employee's rights,
- What will happen on the day the employee attends work in their preferred gender role,
- Whether the employee wishes to be redeployed when they change their gender,
- Change of uniform or other aspects of a company's dress codes

6.2.a. Advice for the Employer:

Requesting evidence of:

- a formal name change, or
- medical evidence of undergoing gender reassignment, or
- a Gender Recognition certificate

constitutes discrimination under the Equality Act.

An employer or service provider would have to be able to demonstrate an **absolute and essential NEED** for seeing any of these, before any tribunal would order these as a pre-requisite to name and gender change.

6.3. THE BATHROOM/ TOILET QUESTION

Referred to in the United States as the Bathroom Question, in the UK this is known as 'the **Use of Public or Workplace Toilets or Changing rooms**' question.

Once a transgender employee or service user has begun living and working full-time in the gender that reflects his or her gender identity, **they should always**

be allowed access to the toilets or changing rooms consistent with his or her gender identity.

It is completely inappropriate to expect a trans person dressed in the clothing of their preferred gender, to use the toilets of their birth gender.

It is difficult to take that first step into using the loos that in the past you would not have considered using.

As such, **initially SOME** Trans people might agree or even prefer to use the disabled facilities, during their early transition – but **this should only be agreed if that is their preference**. Even then, it would be inappropriate to request them to do so for more than 3 months.

The Equality Act 2010 requires that Trans people are provided with the same access to facilities as any other person of their gender identity.

A Trans Person who is presenting himself or herself as a member of their preferred gender role **AND** who intends to undergo; is undergoing, or who has undergone gender reassignment **MUST NOT** be forced to use the disabled toilet.

6.3.a. Toilet Law

There are **different rules for toilet provision for employers and service providers depending upon** the building they occupy and **what can reasonably be provided** in it.

A large office block or factory can clearly provide more than a small sandwich shop. **Employers must always provide toilet facilities OR allow reasonable access to other toilets outside of the workplace.**

Local byelaws may **require** places where people eat, such as restaurants, to provide toilets for patrons.

THE MINIMUM IS ONE TOILET, which is **ACCESSIBLE** to people with disabilities, along with everyone else.

After that, **if it is feasible**, provision should be made for a separate toilet for

women from that used by men. However, there is **no legal requirement** for the separation. So long as one toilet is separate for women to use (and where possible, a separate one for men) all other toilets can be shared toilets. After all we share the loo at home, and that does not cause us to break out into sexually inappropriate behaviour – which presumably is the fear being expressed when women are saying they do not want ‘a man’ to use their toilets.

The **Equality Act 2010** requires that everyone, **INCLUDING TRANS PEOPLE** are provided with **the same access** to facilities as any other person. So long as they are presenting in their preferred gender identity, they **must have the same access** as others presenting in that gender identity, including access to changing rooms and the toilets.

6.3.b. The Use and Abuse of the Loos

Being a private space, toilets may be abused by some employees, who ‘go for a smoke’, or to waste time, or read the newspaper.

It is contrary to a person’s human rights under Art. 8 of the European Convention and the Human Rights Act 1998, to insist that employees can only visit the toilet at set times of the day. You must not, in essence, punish all of your employees because one or two need reprimanding.

Toilets are often the only private space in a workplace. As such, some employees might use the toilets **as a space for prayer**. In that case, consideration should be given to providing an alternative space for prayer, so as to ensure proper toilet access for other employees.

6.3.c. Other People & the Use of Toilets or Changing Rooms

One of the most frequent problems faced by Trans people, has been women being concerned that a trans woman will be using the ‘ladies’ loo.

If other employees or service users are causing problems, such as harassment, or threatening to harass a trans woman or trans man, you **might** ask the trans person to temporarily use another facility, such as the disabled toilets.

However, this **must only be for a very short period of time** – a few days at most – and **only to protect them from harassment** whilst you try and sort out the other employees or service users. Most people do see sense in the end (see the list below).

If employees or service users will not change their attitudes to a trans person using the loo or changing room, it is the **Employer's or Service Provider's responsibility** to protect the trans person, and ensure they have equal access.

One alternative is to bring in professional trainers, such as Press For Change. PFC provides a 2 hour training for employees with whom there are difficulties. Further details can be found at www.pfc.org.uk under the business and training sections.

The Employer or Service provider should speak or write to those people who are complaining or causing problems, and tell them of the **EMPLOYERS OR SERVICE PROVIDERS' LEGAL OBLIGATIONS** (see above) and the following facts:

- Their concern should be with criminal men, who might dress up as women in order to access the 'Ladies'. This is a very unusual and exceptional crime that has not been noted anywhere to our knowledge. Trans women would be equally at risk from such criminal men.
- Trans women will likely be terrified of how other women might respond, so will be as discreet as possible when needing the loo.
- The same can be said of trans men using the 'Gents'.
- Trans women clearly cannot use the 'Gents'. To do so would make them as vulnerable, if not more vulnerable, as any other woman to inappropriate male behaviour.
- The Disabled loo is for disabled people who often need a loo urgently. A disabled person would be rightly angry, and may have a case under the Equality Act 2010 if an employer or service provider was failing to make reasonable adjustments to provide them with suitable access, if they were to regularly find a non-disabled person blocking their use of the loo.
- Toilet cubicles are there to provide privacy for all. Everybody would do better to worry about ensuring the locks work, the toilets are clean, and there is loo paper, soap and towels. (We find that the best way to handle the toilet

question is to ensure the locks work, and the loos are a clean and a welcome place for all)

CHANGING ROOMS should provide privacy for all. Few women (or men) enjoy undressing in front of their colleagues; they may have body issues, may have a colostomy or other stoma bag, or a woman may have had a mastectomy, or other surgery.

A man may well have spent years of his childhood being bullied about his small penis, or his Gynaecomastia (enlarged breast growth). They would all prefer to have private changing spaces. **Rails, hooks and curtains cost little** and can **improve life quality for all.**

Many new buildings are creating unisex bathroom areas, with private cubicles. Anyone who has experienced the difference between going to the loo in the USA, where there is little privacy even in a cubicle or visiting the loo in Amsterdam, where each toilet is its own separate small room, with a door which completely encloses the space, will know the difference in how they have felt.

Stephen Whittle says: At my Law School, we have an enclosed area with 8 separate cubicles, each has a toilet, small wash basin, hand dryer, and sanitary towel bin. The doors completely enclose the space. There is an adjacent disabled toilet and a shower room; both are unisex.. Men and women on the staff share these toilets, as we would do in our own homes.

Initially there were no 'gender' signs on the doors, so we all used any loo. Then our estates manager insisted on signs, male or female indicators on alternative doors. Nobody pays any attention to them, just as one wouldn't at home.

One consequence, I find as a man, is that the loos are much cleaner and nicer than men's toilets normally are, and the men have even learnt to lift the seat and to put it down again!

On the other floors, separation of similar loo areas for the students is according to gender; one floor has toilets for male students, the other for female students, and so on. The male student's toilets are revolting, and we are currently working on whether there can be sharing of the areas, as we (the staff) do with ours, in order to improve the toilets over all.

Pt. 7. CHANGING PERSONAL RECORDS

For transsexual and transgender people who commence living permanently in their preferred gender role the changing of one's documentation is a crucial part of the transition process.

7.1. WHAT IS GOING WRONG?

Trans people frequently report that their employers, banks, medical practice, and other institutions fail to promptly change the details on Trans people's records. They report how many organisational staff seem to 'make up rules on the spot'. Invariably what they have made up is wrong.

The **Gender Recognition Act 2004** seems to have confused some organisations, including universities, the police and health authorities, who now falsely claim that no change of title, name, pronouns or gender can be made without a gender recognition certificate.

Refusing to change personal details, for example the names on Examination Certificates, without sight of a Gender Recognition certificate **would undermine the purpose** of the **Gender Recognition Act's provision of privacy**.

IMAGINE, for a moment, having to live for 2 years as a new person if you could not formally change your name and gender pronouns on your day to day records. It would make life almost impossible, which is why a **lawful system** developed through **custom and practice** has been in place for the last 30 years. This allows Trans people to change all of their records, other than their birth certificate, in advance of applying for full gender recognition.

A person who wishes to their legal gender must permanently live in their preferred gender role for all purposes, **for at least 2 years** before they can apply for a Gender Recognition certificate. **Similarly, they are required to live and work, or do the equivalent of full time work, permanently for between at least**

one and two years before they will receive a referral for any gender reassignment surgeries.

For over thirty years a whole range of institutions, including all of the above, routinely changed Trans people's details on production of a formal change of name and (as was then required) a doctor's note.

This good, lawful custom and practice continues to exist. All organisations need to do is reinstate the simple and lawful processes which they had used previously. This is crucial and necessary for Trans people to continue their gender reassignment treatment in peace, and with privacy.

Organisations and their employees who refuse the simple and easily met request of referring to a person with their preferred title and name, and with pronouns that reflect the way the person presents themselves, through their clothing, hair, jewellery, and other indicators of gender, **are acting unlawfully.**

EXAMPLES OF WHERE THINGS GO WRONG:

- **Some banks** refuse to issue credit cards in two names to those Trans people, who are on the way to gender reassignment, but who are not yet living permanently in their preferred gender role. Banks already provide other people with the same credit card twice in a second name; actors, writers, lawyers and the many other people who use a different name for professional purposes as well as for spouses and partners.
- **Health providers** argue with Trans patients as to whether they will call the person Mr or Miss, he or she , which leads to trans people failing to seek needed health care.
- **Benefit agency staff** who insist on calling out "Mr. Jane Smith" and sending wrongly addressed letters to people who live in a mullti-occupancy house.
- **Universities and Colleges** which argue that they cannot issue new exam or degree certificates in a person's new name, for fear of fraud.
- **Police officers** who will not accept the name given as legal if they think the person is trans, without seeing a Gender Recognition certificate.

These practices are unlawful discrimination, according to the provisions of

European law, and the **Equality Act 2010**.

The Equality Act 2010 does not require equal treatment as such, but requires that the end result is EQUALITY. Therefore the process should be adapted to each person and their differences and individual needs, to enable that equality. Organisational staff who treat Trans people which leads to results that are different, clearly contravene the obligations under the Act to employ people or deploy services on a **fair** way which results in **equality**.

7.2. CHANGING NAMES 'OFFICIALLY'

7.2.a. A Statutory Declaration of Name Change

Most Trans people change the pronouns used before their name (Mr, Mrs, Miss etc) and their name using a **STATUTORY DECLARATION OF NAME CHANGE**. **On the next pages** there are samples of a typical statutory declarations form Trans people.

- A Statutory Declaration of Name Change, if typed up by the applicant, costs only £7 for a solicitor to notarise, or £1 for the Chief Clerk of the Local Magistrates Court to notarise;
- A Statutory Declaration of Name Change has greater legal standing than a deed poll, as it must be sworn in front of a notary;
- A Statutory Declaration of Name Change can be typed up by the person changing their name, there is no need for an official document; it must follow a specific form of words (see the previous page), and it must be neat and easy to read, and on A4 paper;

Most people think a deed poll is somehow 'more legal' than a Statutory Declaration of Name Change. That is not true in most cases.

7.2.b. Why a trans Person should NOT use a deed Poll

Deed Polls, which are 'Unenrolled', simply require the signature to be witnessed

by someone independent (for example a friend or neighbour). A Statutory Declaration of Name Change has to be sworn in front of a notary, either an appropriately qualified solicitor or the chief clerk of the court, who then witnesses it by signing it.

To have the equivalent legal standing of a sworn Statutory Declaration of Name Change a deed poll must be **ENROLLED**.

Enrolling a Deed Poll is regulated by The Enrolment of Deeds (Change of Name) Regulations 1994. It currently costs £102 (June 2013) to enrol a deed poll.

The deed poll is then placed in the Enrolment Books at the Supreme Court of Judicature, Royal Courts of Justice, London. After five years, an enrolled Deed Poll is transferred from the Royal Courts to the National Archives in Kew, Surrey. As such anyone can then go to the archive and see it.

Furthermore, full details of person's name change details and home address have to be published on the London Gazette's website for all to see.

Clearly this is far more expensive, and it does not afford the privacy a trans person needs.

If using the Deed Poll process as an adult to register a new name, the Registrar will allow a person to choose any name they wish for any lawful purpose, except in very exceptional cases.

7.2.c. The Name Rules of the Registrar of Births and Deaths

The Registrar of births and deaths will only become involved in a legal change of name when:

- When a child's birth is registered
- When an adoption is registered
- When a person uses a Deed Poll to change their name or title

However, **an adult does not have to refer to the Registrar** when using a Statutory Declaration of Name Change .

When **registering a name**, the Registrar will **NOT** accept names they consider to

STATUTORY DECLARATION OF NAME & GENDER CHANGE (MTF)

I, Miss Rebecca Thompson of 16 Greenhill Street, Salford , M41 6JF DO SOLEMNLY AND SINCERELY DECLARE as follows:-

1. I am undergoing the process of gender reassignment from **male to female**. As part of the process, I absolutely and entirely renounce, relinquish and abandon the use of my former forename of Robert and assume, adopt and determine to take and use the forename of Rebecca in substitution for my former forename of Robert.
2. I absolutely and entirely renounce, relinquish and abandon the use of my former surname of Williams and assume, adopt and determine to take and use the surname of Thompson in substitution for my former surname of Williams.
3. I absolutely and entirely renounce, relinquish and abandon the use of my former title of Mr and assume, adopt and determine to take and use the title of Miss in substitution for my former title of Mr.
4. I shall at all times hereafter in all records, deeds, documents and other writings and in all actions and proceedings as well as in all dealings and transactions on all occasions whatsoever use and subscribe the said names of Miss Rebecca Thompson as my names in substitution for my former names of Mr Roger Williams so relinquished as aforesaid to the intent that I may hereafter be called, known or distinguished not by my former names of Mr Roger Williams but by my names of Miss Rebecca Thompson only.
5. I authorise and require all persons at all times to designate, describe and address me by the adopted names of Miss Rebecca Thompson
6. AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835.

Mr Roger Williams

SIGNED AND DECLARED at Westminster
in the County of Greater London
this 5th day of January 2012

Before me *Andrea Green*

Solicitor/Commissioner for Oaths, Panones Solicitors, 46 Deansgate,
Manchester M3 6FG

Miss Rebecca Thompson



STATUTORY DECLARATION OF NAME & GENDER CHANGE (FTM)

I, Mr Stuart Johnson, of Rose Cottage, 22 Field Lane, Bishops Stortford, CM18 7PR DO SOLEMNLY AND SINCERELY DECLARE as follows:-

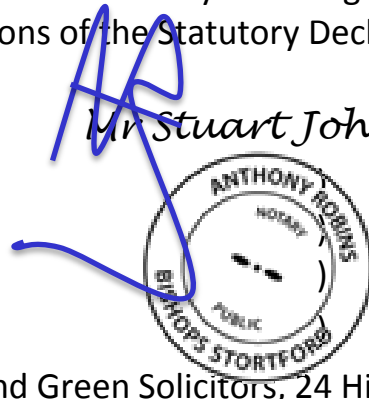
7. I am undergoing the process of gender reassignment from **female to male**. As part of the process, I absolutely and entirely renounce, relinquish and abandon the use of my former forename of Sallie and assume, adopt and determine to take and use the forename of Stuart in substitution for my former forename of Sallie.
8. I absolutely and entirely renounce, relinquish and abandon the use of my former surname of White and assume, adopt and determine to take and use the surname of Johnson in substitution for my former surname of White.
9. I absolutely and entirely renounce, relinquish and abandon the use of my former title of Mrs and assume, adopt and determine to take and use the title of Mr in substitution for my former title of Mrs.
10. I shall at all times hereafter in all records, deeds, documents and other writings and in all actions and proceedings as well as in all dealings and transactions on all occasions whatsoever use and subscribe the said names of Mr Stuart Johnson as my names in substitution for my former names of Mrs Sallie White so relinquished as aforesaid to the intent that I may hereafter be called, known or distinguished not by my former names of Mrs Sallie White but by my names of Mr Stuart Johnson only.
11. I authorise and require all persons at all times to designate, describe and address me by the adopted names of Mr Stuart Johnson
12. AND I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Mrs Sallie White

SIGNED AND DECLARED at Westminster
in the County of Greater London
this 5th day of January 2012

Before me *Anthony Robbins*

Solicitor/Commissioner for Oaths, Green and Green Solicitors, 24 High Street
Bishops Stortford, **Hertfordshire CM23 2ZX**



be contrary to public decency. Mercifully, therefore, no one can register his or her child's name as 'Hot Sexy Knickers'. The Registrar will not accept names that:

- do not include at least one first name and one surname. (no 'Jones Jones')
- are impossible to pronounce (no 'Xnmwlddodtn Ttxoxumal')
- contain symbols or numbers (no 'Johnny+or-1234')
- contain punctuation other than hyphens and apostrophes (no 'Tom# Jones**')
- may lead people to believe you have a title (No Lord Archer & no 'HRH Elizabeth Windsor')
- contain offensive and or racist content (no 'Joanne Sexy Boobs' or 'Little Black Sambo')

A Trans person who is using a Statutory declaration of Name change should bear in mind the above rules when choosing their new name, as the new name will ultimately be used on the new birth certificate they are given when they successfully apply for a change of legal gender,

A person holding a PhD or qualified as a doctor or dentist, who is using a **Deed poll** to change their name, can also formally change their title in their name from Mr or Mrs/Miss to Dr, if they can provide evidence of the qualifications they are claiming. But, they don't need to, if the title is a merit title, they can use it anyway.

7.3. BEST ORGANISATIONAL PRACTICE: CHANGING RECORDS

The process of instigating a name and pronoun change at the point of transition is relatively easy, and lawful. The process given above can be used to change all documents and records (other than the birth record). Birth records may only be changed later, after two years, using the Gender Recognition process.

Typical examples where titles, names and gender pronouns **MUST** be changed if requested when a Trans person is transitioning, include:

BANKS: Bank records, letters, credit cards, account details, terms of address.

EMPLOYERS: All records should be changed when a person transitions. The only exception might be the record of 'sex' on company pension paperwork. If pensionable ages are still different on the company scheme, currently, changes to pension records can only be made after a Gender Recognition certificate has been obtained. If the company already provides a pension at equalised ages, or when they are fully equalised, then these records should also be changed at the time of transition.

State pension records are maintained by HMRC and they retain details until the change of legal gender, or until pension ages have been equalised, so there is no necessity for employers to retain any details.

HEALTH SERVICES: Name and gender (sex) on medical cards, all medical records including GP records, terms of address, placement on wards or attendance at gender specific clinics, should all reflect the preferred gender from the point of transition.

GOVERNMENT AGENCIES: Name and Gender will be changed on Passports and driving licences. Tax, Social security or other benefit records, and national insurance contributions, can also be changed, but a gender marker will not be changed until such time as pension ages are equalised or the person has obtained a Gender Recognition certificate. A high security rating will be attached to the person's file to protect it from unauthorised intrusion. However, this can delay any inquiry relating to welfare benefits considerably. Unemployed Trans people often forgo this privacy to ensure prompt receipt of benefit payments.

SCHOOLS, COLLEGES AND UNIVERSITIES: certificates of achievement, registration records, terms of address, school uniform to that of the preferred gender, residential placements to that of preferred gender.

CONTRACTUAL OBLIGATIONS: terms of address, both written and spoken.

7.4. CHANGES: MINIMAL LEGAL REQUIREMENTS

There are **NO LEGAL REQUIREMENTS** as such, before Trans people can ask organisations to change their name or gender on their personal records.

However, though Trans people are advised to make a **Statutory Declaration of Their Name And Gender Change**, it is **not compulsory** in order to change a name or gender, which can be done simply through custom and practice.

Organisations can require some formal proof of name and status changes, **if they have similar requirements for others**, e.g. if they would also require a woman who marries to show her marriage certificate before her name or status was altered on her records. For example HMRC has these requirements to alter anyone's tax and National Insurance records.

The statutory declaration of name and gender change is then submitted to the organisation along with proof of the former identity (if required), and any fee required, wherein the change of records is to be made. Any fees should be in line with those normally charged for other people to alter records or obtain replacement documents e.g. the DVLA charges everyone the same fee for a new driving licence.

On receipt of these documents, the organisation concerned changes the Trans persons records to record their new name and gender pronouns, and where relevant, the gender role marker – e.g. the 'm' or 'f' on documents.

The organisation informs the Trans person of the changes, and reissues relevant documents as required e.g. passport, driving licence, credit cards, bank books, certificates of qualifications, medical records.

Links may be maintained to former records in certain circumstances such as a company [pension scheme, but only if these are highlighted as secure and in need of review by senior staff before opening.

After two years, the Trans person may choose to apply for a Gender Recognition Certificate. This is **NOT** compulsory. If successful, they will be recognised as a member of their preferred gender (sex) for **ALL legal purposes**. They may contact you and ask that their former name and gender is purged from any old

records on which it has been retained. In almost all cases, complied this request is lawful and must be with to ensure the future privacy of their past identity.

Summing Up: Changing Personal Records

When a Trans person transitions to living permanently in their preferred gender role, i.e. 24 hours a day, including going to work or college as a member of the preferred gender, organisations including employers have **no lawful reason** to refuse to change the Trans person's personal records, including their pronouns and name.



When a Trans person initially changes their name, they are only changing their **legal gender(sex) for workplace purposes**. e.g. pension rights. They are still of their original gender for other purposes until after 2 years, they can apply for a Gender Recognition certificate.

The Equality Act 2010 protects them from discrimination and harassment in the workplace, or when accessing goods services, housing and facilities. This protection continues throughout their life. Their employer should change their personnel and other records on their transition.

A Trans person only changes their legal gender, when **after at least two years in their preferred gender role** they obtain a Gender Recognition certificate.

Their employer must purge old records of any details relating to their former name and gender at this point.

Pt. 8. THE GENDER RECOGNITION ACT 2004.

8.1. OBTAINING LEGAL GENDER RECOGNITION

The Gender Recognition Act 2004 enables Trans people to apply for 'gender recognition' and those born in the UK can obtain a new birth certificate.

Once a person has been living in their preferred gender role for two years or longer, they are then eligible to apply for a Gender Recognition Certificate; this will allow them to be legally recognised in their preferred gender identity. Further details can be obtained from the Gender Recognition Panel website: www.grp.gov.uk.

Q. Does the Trans person have to have had any surgery or be taking hormones to apply for their GRC?

A. No, a person does not have to be taking any medication or have had any surgery to apply. All they ask is that they meet the requirements set down to apply for a GRC.

Q. When does the two year period start from?

A. The two year period starts counting from the day a person commences living permanently in their preferred gender role. They **must not have switched between roles during that time.**

There are three requirements to being eligible to apply for Gender Recognition;

- Having lived in the preferred gender role for at least two years
- Be unmarried or not in a civil partnership
- And have been diagnosed as having or had gender dysphoria

In order to obtain for a Gender Recognition certificate a Trans person has to provide:

- An expert's report of the history of the diagnosis of their gender dysphoria, **and**
- If they have had gender reassignment treatment or surgery, a medical report providing details of the treatment **and**
- **Evidence** that proves that they have lived in their acquired gender role for 2 years, **and**
- **A Statutory declaration** that they are:
 - **unmarried** and
 - they **intend to live in their preferred gender role, permanently for the remainder of their life.**

8.2. TRANS PEOPLE WHO ARE MARRIED OR IN A CIVIL PARTNERSHIP

The Gender Recognition Act 2004 (GRA) requires that if one partner in a Marriage or a Civil Partnership transitions (changes the gender role in which they live), and wishes to obtain recognition of their preferred gender for all legal purposes, their **marriage or civil partnership must be ended.**⁵

However, if they wish to remain 'contracted partners' – which many do, whether for love or survivor pension benefits – the trans person is required to obtain an **Interim Gender Recognition certificate**, which they or their spouse can then use to have the marriage annulled. The couple can then lawfully contract a civil partnership (or a marriage, if they 'were in a same sex relationship and previously had a Civil Partnership).

This system was put in place in order to ensure that nobody was party to any 'accidental same sex marriage', and at the same time, protects the hard-earned survivor pension benefits of each of the spouses.

Such a couple can have their marriage annulled within the high court, and with a

⁵ Henceforth whenever marriage is referred to it also refers to a civil partnership, and when a civil partnership is referred to it also refers to a marriage. This is because gender identity has no relationship to sexual orientation, and trans people can have heterosexual, homosexual or bisexual orientations.

little pre-planning can cross the road to the Registrar's office and contract a civil partnership (or vice versa) the same day.

However, this system was clearly **legally abhorrent**. The only time law had ever been used in the western world (and probably also in the east) to insist that a long and happy marriage must be ended before one party could gain their human rights. Rights recognised by the European Court of Human Rights as long ago as 2002.

8.2.a. The Marriage (Same Sex Couples) Act 2013

The **Marriage (Same Sex Couples) Act 2013** (MSSC Act) provided an opportunity came to change this legal anathema.

SCHEDULE 5 of the **MSSCA** is intended to finally get rid of that legal anathema, and to allow Trans people to obtain their **Gender Recognition certificate** – and importantly **their human rights** - whilst retaining their marriage (or civil partnership) to the person they love.

Moreover, the **MSSC ACT** provides a '**fast track**' for those Trans people who had put their request for gender recognition on the back burner because, whether for religious, personal, or emotional reasons, they did not want to annul their marriage and contract a civil partnership.

Finally, the **MSSC Act** addresses the problem of those people who have already had their marriage annulled in order to obtain their Gender Recognition certificate, and who have consequently contracted a civil partnership. They can now apply for their civil partnership to **be converted** into a traditional marriage.

The government proposes that this system will come into force by the end of 2014.

8.3. WHAT LEGAL GENDER RECOGNITION MEANS

IF SUCCESSFUL in their application for gender recognition, the Trans person is given a **Gender Recognition certificate**.

1. If the Trans person was born in the UK, (or they have parents who registered

their birth when serving with the British Forces Overseas, or the UK's Consular Service), a **new BIRTH CERTIFICATE** is issued.

The new Birth Certificate has their new name, and other details as if at birth they were a member of their preferred gender, rather than the one they were given. The Birth certificate is **INDISTINGUISHABLE** from those of any other person who has had to obtain a copy of their birth certificate.

2. **If a person's birth is registered in another country**, the UK Government is unable to provide a new birth certificate. A person whose birth is registered with another state can still apply for Gender Recognition, and if successful, they will receive a Gender Recognition certificate. Their lack of a British birth certificate means they cannot be issued with a new birth certificate, BUT this will NOT have any impact on their new legal status.

Gender recognition means that from now on⁶ the Trans person has all the rights of their new sex for ALL legal purposes, including health and social care.

n.b. **Employment Rights** in the preferred gender role come **on the day of transition**, they are not dependent upon receiving a Gender Recognition certificate.

The Trans person will also be able to contract marriage or a civil partnership in their preferred gender identity.

The Gender Recognition certificate **affords recognition for ALL LEGAL as well as SOCIAL purposes.**

8.3.a. Privacy & s.22, Gender Recognition Act 2004

Under the **Human Rights Act 1998** and **Art. 8 of the European Convention of Human Rights** all people have a basic and core **RIGHT TO PRIVACY**.

The cases of **Goodwin** and **I v the United Kingdom** at the **European Court of**

⁶ The rights of the trans person on receiving a Gender Recognition certificate are not retrospective. For example, if they were a parent, e.g. a father, they will remain a father for ascertaining the legal rights of their former partner and their children. However, workplace rights in their new gender role, are NOT dependent upon having a Gender Recognition certificate.

Human Rights concerned the rights of transsexual people. The Court held that **Article 8 rights to privacy** included a general right to privacy for a trans person's birth gender and their trans related medical history.

This **Right to Privacy** is now embodied in law by the **Gender Recognition Act 2004, Section.22** , in which new rules greatly enhance the privacy rights of Trans people.

When a trans person has **applied for** or **obtained** a Gender Recognition certificate, **s.22** affords them an extended right of privacy, in that:

Any person who has **obtained, or been given, the information in an official capacity, that a person is undergoing or has undergone gender reassignment (or that they are a transsexual person), MUST NOT further disclose that information** or do anything that would make such a disclosure, **without the express permission of the trans person.**

UNLAWFUL DISCLOSURE is a **strict liability criminal offence**, (i.e. just like parking on double yellow lines) and there is **no excuse UNLESS** the excuse is listed in the exemptions available in **s.22** of the **Gender Recognition Act 2004**.

Conviction can result in a level 5 fine (currently up to £5000)

S.22 covers **ALL PEOPLE** who might receive this information in their **official capacity**, for example:

- Employers and their staff, including human resources staff,
- Inland revenue, and Benefit agency staff,
- Lawyers, Probation Officers,
- Doctors, nurses and other health care workers,
- Social and health care agencies, & people employed by such an agency,
- Benefits and Welfare advisors,
- Police officers, (an exception is allowed when necessary for the investigation of a crime),
- The courts, (an exception is allowed where the change of identity is relevant to the case, for example a divorce or fraud case),

- Staff of Housing Associations, etc.

The rule could cause problems for care & health workers in particular, if seeking advice about client issues from their managers and co-workers. If indiscreet, this may result in them facing criminal charges. Workers must not do anything that would identify a client as being a trans person who is applying for, or who has a Gender Recognition certificate. **They may only name the client, if they have the trans person's EXPRESS PERMISSION to do so (preferably in writing).**

Without that permission, they must only discuss the matter in relation to a hypothetical person, in a hypothetical manner

Unlawful Disclosure is a strict liability CRIMINAL OFFENCE so there is no room for pleading 'reasonableness' as a defence.

8

8.3.b. Exceptions to S.22 Privacy Protection

There are **5 exceptions** to the rule contained in s.22. These exceptions are contained in the **Gender Recognition (Disclosure of Information) Order 2005**

First Exception: s. 3. Disclosure for purpose of obtaining Legal Advice. This allows a person who is seeking legal advice, e.g. an employer, so disclose the information to the lawyer from whom they are seeking legal advice.

Second Exception: s. 4. Disclosure for Religious Purposes. This allows ministers of religion who know a person is transsexual and has a Gender Recognition certificate to disclose that fact to another minister. They may only do this if they believe the other minister might otherwise:

- confirm an appointment of a transsexual person to a religious post wherein a transsexual person would not be accepted by the religious body or a majority of it's followers, or
- perform a marriage ceremony for the transsexual person and their partner, when they would conscientiously object to the marriage if they had known that one of the partners was transsexual.

Third Exception: s.5. Disclosure for Medical Purposes. This allows a health

professional, to make disclosure to another health professional when the disclosure is made **for medical purposes**.

The Health professional must **reasonably believe the Trans person has given permission** for disclosure, **or that the Trans person is unable to give permission** – which would usually mean they were unconscious or too unwell to give permission for disclosure.

- A Health professional is :
- a registered doctor,
- a registered nurse,
- a registered dentist,
- a registered pharmacist,
- a registered paramedic ,
- registered operating theatre practitioner, or
- any person training for any of the above positions

The remaining **2** exception allows **Credit Reference agencies**, or an **Insolvency Practitioner** to disclose if the information **is contained in an order from a court or tribunal**, for example, an Insolvency order.

8.4. THE GENDER RECOGNITION CERTIFICATE

Can I Ask to see a person's Gender Recognition certificate?

NO you can not

A **Gender Recognition Certificate** (proof of a change of gender for all lawful purposes) cannot be requested to prove that a person has acquired a lawful change of names and gender pronouns for Trans people. When a person initially transitions they will not have a Gender Recognition certificate (GRC). The GRC cannot be acquired until the person has lived in their new gender for at least 2 years.

It is **never** appropriate to ask to see a Gender Recognition certificate – it is a

private document. Most Trans people will choose to destroy it once they have received their new birth certificate. Instead, If wanting to receive proof a change of name and gender, the **MOST** any employer or service organisation can ask for is:

At the time of transition: a Statutory Declaration of Name Change.

At the time of legal recognition of gender change: the person's new birth certificate

8.5. WHAT IF A TRANS PERSON WAS NOT BORN IN THE UK?

A person who is not born in the UK can obtain legal recognition of their new gender, and they will receive a Gender Recognition certificate. However, they will not receive a new UK birth certificate. It maybe that their birth state does nto have a system of recognition of a change of gender, and so they will not be able to get new birth certificate or passport in their new identity.

Normally, such people apply for a **UK RESIDENCY CARD**.

The residency card, which can be in their new name, confirms their right of residence under European law. The residence card may take the form of:

- an **endorsement in their passport** (also called a 'vignette'), or
- a separate document called an '**immigration status document**, which confirms their right to work status.

This will be sufficient to demonstrate their right to work in the UK.

If they have not yet obtained a residence card or other document in their new name and gender, they **may** choose to show a prospective employer their Gender Recognition certificate to prove that they are the person in their passport and have a right to work.

If you are shown a person's Gender Recognition certificate to confirm a person's right to work, then whatever the circumstances, you must NOT tell anyone else, including any manager, that you have seen the gender recognition certificate. You must develop some way of recording the person's right to work, without indicating that you have seen their GRC. If you leave anything on the

record to show that the person has a GRC, this could result in your conviction for unlawful disclosure under s.22 of the Gender Recognition Act 2004 (see section 4.4 above).

8.6. THE MEANING OF GENDER RECOGNITION

If a Trans person meets the required standards for the Gender Recognition Panel (see www.grp.gov.uk), a **Gender Recognition certificate** is issued.

A Gender Recognition certificate changes a person's gender (sex) status for ALL legal purposes.

- If their birth is registered in the UK (or with British Forces overseas), a **new birth certificate** recognising the Trans person's new legal gender is issued.
- If a Trans person's birth is registered with an overseas state, the Trans person needs to discover whether their birth registration country issues a new birth certificate. Most European countries do, elsewhere, it is becoming more common e.g. many US states, Canada, most Australian States, New Zealand, Argentina, South Africa, do issue new birth certificates, but quite a lot of states still do not issue new birth certificates or even have a gender recognition system

8.6.a. The Gender Recognition Certificate

The purpose of legal recognition for all purposes of a gender change is **to afford Trans people privacy** in relation to their medical and social history.

If all and sundry, including banks, hospitals, local authorities etc., could demand to see the Gender Recognition Certificate of a Trans person, the purpose of the Gender Recognition Act 2004, which was implemented to comply with decisions made in the European Court of Human Rights, would be completely undermined.

If you are not a Trans person, you will usually never get to see a Gender Recognition certificate.

Demanding sight of a Gender Recognition Certificate from a Trans person is, in itself, unlawful.

Once a Trans person has a Gender Recognition Certificate they do not have to disclose their past to anyone, **except in very special circumstances.**

The only time a person will see a Gender Recognition certificate is if:

- you are the person undergoing gender reassignment, or
- **you are employing a Trans worker who was born outside of the UK.**

In the second circumstances, a worker might need to produce a Gender Recognition certificate as evidence of their identity. Some parts of the world, such as rural India or Tibet still have no birth registration system. A Trans person from these countries may need to keep their Gender Recognition certificate to prove their identity.

This will be because some countries will not yet issue new birth certificates or passports, so the person's passport which often contains their visa giving them permission to work, will record their former name and gender.

Whereas an employer or business (where relevant) must now ask everyone they employ for evidence of their right to work in the UK, such as a passport, **it is not acceptable to demand sight of a birth certificate for that purpose.**

N.B. A UK birth certificate will not prove any one's identity – for a small fee, anyone can obtain any other person's birth certificate over the internet.

If a Trans employee from overseas only has a passport in their former identity they may have to show their Gender Recognition certificate to prove the link between who they are and the person identified in the passport.

If shown a Gender Recognition certificate, the employer must NOT record this. They should simply record that they have seen evidence that the person has the right to work in the UK.

The main purpose of the Gender Recognition certificate beyond showing that the person's gender has been recognised, is to be available for identification purposes if the person is named by their old name and gender in a will, and needs to prove who they are for inheritance.

Most Trans people will not need to keep their Gender Recognition certificate once they have it, as they will be issued with a new birth certificate which they can use to prove their identity. **Many will destroy their Gender Recognition certificate as is their right.**

The 'Changing Names and Pronouns' (see part 4) section also explains how Trans people can change their various public records.

8.7. SPORT AND THE GENDER RECOGNITION ACT 2004

Section 19 of the Gender Recognition Act 2004 provides guidance for when Trans people can participate in sport.

In amateur or recreational sport, s.19 states that Trans people may only be excluded from sport if it can be **proven with clear evidence** that their participation will affect the **safety of other participants, or fairness of the sport.**

If the Trans person is employed to play sport professionally, the provisions in s. 19 may be over-ridden by the employment requirements of the Equality Act 2010, and it could well be unlawful to rule that the Trans person is unable to play, if that affects their employment contract.

Press For Change provides a guide for Sports, Health & Leisure Centre and Gym Managers to the rights of Trans people to engage and participate in sporting and fitness activities: **Factsheet 14: The Use of Sports and Leisure Facilities by Trans people.**

8.8. INSURANCE & GENDER RECOGNITION

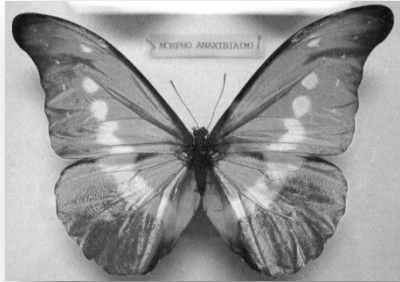
Under European Law, and the Equality Act 2010, if providing insurance for a trans person, an insurer is not able to put any sort of premium on top of what would be the normal insurance rate, unless the insurer has **actual, actuarial proof of increased risk, related to the relevant gender reassignment treatment.**

Once a Trans person does change their legal gender status, if there is actuarial evidence that men or women are at greater risk, the insurer could then raise or

lower the premium according to the direction of gender change. However, there is no such actuarial evidence as yet.

A life insurer will not regard a Trans person as a member of their preferred gender for insurance purposes, after just a name change. They should however change the name and pronoun on all documents in the public domain, as a high

level of privacy rights concerning their medical history is afforded to Trans people. When a trans person provides the insurer with a copy of their new Birth Certificate after gender recognition, the insurer should change the Trans person's records to remove all evidence of the former identity.



Pt. 9. CHECKING CRIMINAL RECORDS

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have merged into the **Disclosure and Barring Service (DBS)**. CRB checks are now called **DBS checks**. CRB Clearances are now known as **DBS Certificates**.

A **DBS check** may be needed for:

- certain jobs with vulnerable people, for example; children, or people in hospital or care homes, or
- voluntary work with children, such as volunteering to be a scout or guide adult helper, or
- offering to house a child on a school exchange visit, or
- sitting on a review board for a service working with vulnerable people, or
- applying to foster or adopt a child

Criminal Records are held by local police forces on the Police National Computer. When the Disclosure and Barring Service constructs a DBS certificate they obtain the information relating to any criminal convictions or cautions from **local** police forces who provide it by accessing their own records and the information they hold on the Police National Computer. The DBS puts the information on the DBS clearance form, in exactly the form they receive it from the local police forces.

A trans person, who has a caution or conviction in their previous gender, can clearly find it very embarrassing if a DBS certificate not only discloses a caution or conviction, but also discloses their former gender to a new or current employer, or to any organisation they might volunteer for. For example, if they want to volunteer to help with the guides or scouts, or if their child is going on an exchange visit with school and the child of the exchange family would normally come on a return visit they will be obliged to produce a DBS certificate.

Clearly, for many people a DBS certificate may well show a caution or conviction, often obtained as a teenager for a minor crime such as being a passenger in a stolen car, using cannabis, or simply being drunk on the street. However, whilst

these will mostly be irrelevant to the reason they are seeking certificate, as **the person's gender at the time of the offence** is included on the form, a DBS certificate may well 'out' a trans person, and cause immense embarrassment at best, loss of a possible job, or transphobic hate crime if this information is 'leaked'.

However, Trans people may now request a change of the gender and name on their criminal record if the crime is a **non-sex related crime**.⁷

9.1. SPENT OFFENCE FILTERING RULES FOR DBS CERTIFICATES

There are now FILTERING rules which filter out certain offences when a DBS Certificate is supplied. This is in recognition that some sentences become spent, and it is not appropriate for people who have served their punishment to have very old and minor sentences repeatedly appearing on a DBS certificate, which can often making access to some jobs very difficult.

Unfortunately, a trans person cannot get a full DBS check for themselves to see in advance exactly what it will say. **Only an employer or equivalent can apply for a full DBS check.**

However, a trans person can get what is known as a **BASIC DISCLOSURE** for **£25**. This would show them what offences should appear on any DBS check.

They could then affirm which ones were spent or should be filtered out.

Disclosure Scotland provide ALL Basic Disclosure checks for the UK.

There are details of how to apply at

<http://www.disclosurescotland.co.uk/apply-online/>

⁷ A non-sex related crime would be a criminal conviction where the person is NOT required to sign the Sex Offenders Register.

9.2. FILTERING RULES FOR DBS CERTIFICATES

9.2.a. For those 18 or over at the time of the offence

An **adult conviction** will be **removed** from a DBS certificate if:

- **11 years have elapsed** since the date of conviction; **and**
- it is the person's only offence, and
- it did not result in a custodial sentence

A conviction will only be removed if it **does not appear** on the **list of offences which will never be removed** from a certificate.

If a person has **more than one offence**, then details of all their convictions will always be included.

- An **adult caution** will be removed after **6 years** have elapsed since the date of the caution — and if it does not appear on the list of offences relevant to safeguarding.

9.2.b. For those under 18 at the time of the offence

- The same rules apply as for **adult convictions**, except that the **elapsed time period is 5.5 years**
- The same rules apply as for **adult cautions**, except that the elapsed time period is **2 years**

There is a list of offences which will never be removed from a DBS Certificate.

These are the most serious sexual, violent and other offences that are considered so serious that they will always be disclosed, regardless of when they took place and the person's remaining criminal record. A full list can be found at:

<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

9.2.c. Northern Ireland

AccessNI manages criminal records disclosures in Northern Ireland. If living in Northern Ireland, a person can apply for disclosure in Northern Ireland from AccessNI.⁸

However, the DBS will **make barring decisions in relation to Northern Ireland**.

9.2.d. Scotland

Disclosure Scotland manages a separate scheme for Scotland.⁹

9.3. REQUESTING A CHANGE OF GENDER ON A CRIMINAL RECORD

If a person knows or thinks they may have a criminal record which happened before they transitioned, then the **Data Protection Act 1998** gives them the right to find out exactly what personal information is held about them by the UK criminal justice system, including local police forces and the Police National Computer

This can usefully be used by a Trans person to check that their name and gender has been changed, where appropriate and permitted, on their criminal records.

9.3.a. Changing the Police Record

i. Personal Information on the National Police Computer

Any person may make a '**SUBJECT ACCESS REQUEST**' for the personal information held about them by a police force. This is **not** the same as a request for a CRB Clearance, which no longer exists. Employers now use the . Employers **cannot** use the Subject Access Request system.

A Trans person should make their Subject Access Request (**SAR**) in writing –

⁸ **AccessNI** can be found at <http://www.nidirect.gov.uk/accessni-criminal-record-checks>

⁹ **Disclosure Scotland** can be found at <https://www.disclosurescotland.co.uk/>

more below. The quickest way to obtain the information is to use a **SAR form**, however they may also make a request by writing a letter to the police force **which investigated and prosecuted the crime or gave the caution.**

- i. A person will normally make their request for a copy of the information about them which is held centrally on the Police National Computer, to the police force, **which investigated and prosecuted the crime or gave the caution.**¹⁰
- ii. Only the police force that **investigated and prosecuted the crime or gave the caution** will be able to provide a copy of all the information held centrally on the Police National Computer.
- iii. The person should make their Subject Access Request (**SAR**) in writing using an **ACPO SAR 01** form, **from the web pages of the police force which investigated and prosecuted the crime or gave the caution .**
- iv. The ACPO form (**ACPO SAR1**) provides access to personal information held by the Police Force on the Police National Computer [PNC] i.e. **convictions, cautions/warnings, reprimands and Penalty Notices for Disorder.**
- v. **ACPO provides a link** to the **SAR form web pages** for all police forces in England and Wales, at http://www.acro.police.uk/subject_access.aspx. **except** the Devon and Cornwall Police force.¹¹
- vi. It is important to return the **ACPO SAR1** form to the **address of the police force, which investigated and prosecuted the crime or gave the caution.** The address is provided on the form.

If a person no longer lives in the UK, they should use the ACPO SAR1 form from the police force for the area where they last lived.

When making a request for information, a trans person will need to provide the police with:

¹⁰ This is because there are times when the police do not have to provide all of the information held on the PNC, and the force which investigated and prosecuted the crime have the power to make the decision as to whether it is appropriate to provide the information.

¹¹ [at www.devon-cornwall.police.uk/YourRightInformation/DataProtection/Pages/default.aspx](http://www.devon-cornwall.police.uk/YourRightInformation/DataProtection/Pages/default.aspx)

- a request in writing, or an **ACPO SAR1** form filled in correctly. Using the **ACPO SAR1** form will help the police to find all their information and may therefore speed up the request, **and**
- a fee for £10 (this is the maximum fee and covers all information); **and**
- proof of their identity at the time of the offence; **and**
- proof of their current identity, **and**
- a photograph (only if they are requesting CCTV footage).
- A Trans person will need to provide evidence of their **former and new name** and their gender change, usually their
 - statutory declaration of name change and a doctors letter confirming the change of gender **or**,
 - if they have a Gender Recognition certificate, a statutory declaration of name change and their new birth certificate .
- Originals will be required so always send your request by RECORDED delivery.
- If requesting CCTV footage they will need to provide photographs of themselves in their gender at the time of the offence to enable identification to take place.

The police **do not have to fulfil the request** until they have received any information they reasonably need to identify the person and find the information they want.

The police application forms will explain what details the police will need to find the information the trans person has requested, and what proof of ID they will usually need to see. For example, they may ask the trans person when they have been in contact with the police and why, and whether they have lived in another part of the UK. N.B. see above; a trans person may have to provide evidence of their old identity at the time of the offence as well as their current identity.

The **Data Protection Act 1998** includes exemptions, which allow the police not to release information in some circumstances. In particular:

- they do not have to release information to if this ‘would be likely to prejudice the prevention or detection of crime’ in a particular case. This could include situations where information relates to an ongoing investigation.

- they may also edit the information they send to remove information about other people.

The police must deal with the request promptly, and at most within 40 days of receiving the request, and the fee and any other information they need to identify the person who has made the request, and find the information they have requested.

The Trans person should always keep a copy of their request. If they do not receive their information in 40 days, then they should contact the police again.

ii. Personal Information on Local Police Records

It is also possible to gain access to **personal information** held by a Police Force on their **local police systems** .

This is usually general information, which would not involve a caution or a conviction, for example Crime Reports where the person has been a witness.

- i. If a trans person feels they are being victimised or treated badly by local police, they should use a **SAR form** for access to local data held on themselves.
- ii. This is referred to as a **SAR APPLICATION 2**.
- iii. A **SAR Application 2 form** is available from the **SAR web page** of the local police force.
- iv. **ACPO provides a link** to the **SAR form web pages** for all police forces in England and Wales, at http://www.acro.police.uk/subject_access.aspx. **except** the Devon and Cornwall Police force whose forms are at <http://www.devon-cornwall.police.uk/YourRightInformation/DataProtection/Pages/default.aspx>

9.3.b. What if the Police Records are incorrect?

When the information is received, If a trans person has any concerns about the accuracy or fullness of the personal data disclosed as being held on the PNC or locally, they will need to **raise it in writing with the Chief Constable** of the police force responsible for the entry.

They should be clear about exactly what it is they believe is inaccurate and what the police force needs to do to correct it, providing evidence of the inaccuracies, where available.

If a police force still does not give all the information the trans person thinks the police may hold on them, the **Information Commissioners Office Enforcement department** may be able to help, see <http://www.ico.org.uk/enforcement>

9.4. REQUESTING A CHANGE OF GENDER ON THE CRIMINAL RECORDS.

ONCE THE TRANS PERSON has discovered what data police forces hold on them, they may then request individual police forces to change the sex (gender) on any non-sex related criminal records.

The **Association of Chief Police Officers (ACPO)** currently supports the principle of changing gender on non-sex related criminal records for Trans people, but the judgment as to whether to do so or not rests with the individual police force responsible for the entry.

The trans person should write to the **data protection officer** of the police force for the area in which the crime was perpetrated which will hold the crime record. They should ensure they provide **EVIDENCE** of:

- their change of name; this would normally be a statutory declaration of name change **and**
- their change of gender, this would normally be:
 - if they do not have a Gender Recognition certificate, a letter from their GP confirming their change of gender. N.B. A trans person does not have to be undergoing medical gender reassignment treatment to obtain a letter from their GP showing they have permanently changed their gender, **or**
 - if they do NOT have a UK Gender Recognition certificate and their birth was **not** registered in the UK, but they do have a legal change of gender from their birth country, their new birth certificate, **or**
 - if they have a Gender Recognition certificate and their birth was registered in the UK; their new birth certificate, **or**

- if they have a Gender Recognition certificate and their birth was **not** registered in the UK; their Gender Recognition certificate.

If a police force refuses to change a trans person's gender on the record of a non-sex related offence, initially the trans person should write to the Chief Constable of the relevant Police Force requesting to appeal the decision. A police force is not obliged to allow an appeal. However, the trans person should include:

- evidence of how the refusal to change the sex could result in them being 'outed' on a Das a trans person
- details of how being 'outed' could affect their life in a detrimental way, in a way which is entirely unrelated to their past offence(s)
- details of the Public Sector General Equality duty contained in the Equality Act 2010, asking that the force recognise their obligations to ensuring equality for Trans people. The general equality duty applies to organisations who exercise public functions which requires all public sector bodies (including the police). The General Equality duty requires Public sector bodies to have due regard to the need to:
 - **Eliminate unlawful discrimination, harassment and victimisation** and other conduct prohibited by the Act.
 - **Advance equality of opportunity** between people who share a protected characteristic and those who do not.
 - **Foster good relations between people** who share a protected characteristic ¹² and those who do not.

9.4.a. If the police force still refuses to change the sex (gender)

PFC is currently campaigning to have the DBS reporting system altered. People who are seeking employment or needing a clearance certificate for other reasons (e.g. they are volunteering at their kids school) do not want to be

¹² Protected Characteristics are the personal characteristics referred to in the Equality Act 2010. These include people intending to undergo, undergoing or having undergone gender reassignment .

dependent upon the whim of a local police force in order to avoid having their previously medical history disclosed unless relevant i.e. the crime resulted in ongoing registration on the sex offenders' register.

9.4.b. Costs for Changing Records

If organisations charge for the simple process of changing a person's name, title or gender on their records, they would be discriminating on the grounds of gender reassignment, contrary to the Equality Act 2010 unless they did so for others, e.g. a change of name when a woman gets married. If a Public Sector employer, they could be contravening a Trans person's legal and human rights. To charge for this service they could be required to prove that it takes a significant amount of work to change the records.

However, organisations can charge a **REASONABLE AMOUNT**, say for changing examination certificates, where the certificate has to be reissued, **and** they would charge other people who needed new or altered certificates for other reasons.

But organisations cannot charge extra e.g. more for the Scrabble club membership just because Trans people might ask for their records to be changed in the future, That would be unlawful discrimination contrary to **s.13 of the Equality Act 2010**.

For further information and advice contact **Press for Change**
 email: **office@pfc.org.uk**
 or write to Press for Change, BM Network, London WC1N 3 XX

Pt. 10. BEST PRACTICE: THE 'JLP' MODEL

A floor manager at the John Lewis Partnership store transitioned from female to male very successfully over 20 years ago. After he informed his managers that he wished to come to work as Jerry rather than 'Judith', 'Judith' was given a fortnight's leave. In the meantime, the staff at the store received the following letter from the JLP Managing director:

"after extensive consultation with doctors and other specialists, one of our partners, Judith XXXX, who works on XXXXXXXX, has made the decision to undergo gender reassignment and to become the man, Jerry, that he always knew himself to be. Jerry is currently on holiday, and he will be returning to work on Monday XXrd XXXX in his preferred gender role.

I am sure you will all join me in congratulating Jerry, and wishing him well in his future life. On his return to work, I will be at the store to welcome Jerry and I trust you will all join me in welcoming him on his return to work.

This is still a very brave decision, as I am sure you all realise. There are people who do not understand why a person may undertake this very difficult but necessary step in their lives, and this can lead to misunderstandings and prejudice. We ask you to remember Jerry's need for privacy and his personal safety if you talk to others, outside of the company, about his transition. On Monday, one of our partners from Human Resources, XXXXXXXX, who has become knowledgeable about gender reassignment, will make herself available in the staff dining room during your normal breaks. Please do not hesitate to approach her if you have any questions or concerns. We will also be putting a link on the staff website to the transsexual support group Press For Change, who provide a very good question and answer section on their web site.

JLP has a policy of supporting all of our partners to maximise their opportunities in life, and to ensure all are treated equality with respect and dignity. Jerry has been a major contributor to staff welfare and sales in our store at Hemel Hempstead for almost fifteen years now, and we hope that you will help us ensure he continues as a partner with JLP for as long as he wishes in the future."

The letter emphasises that support for Jerry comes from the very top of the company, and indicates that it expects similar support from all other employees. It also ensures staff know – in advance – that the company does have an equality policy and how they are expected to behave. It is also realistic in recognising that employee's will probably talk to others outside of the store, but reminds them to be protective of Jerry's rights (this also ensures the company is protected from any employee liability arising out of inappropriate behaviour from the staff). The letter ensures staff can access information either formally or informally through the website of a good quality support organisation.

Note that Jerry is not required to know all about transsexualism – most people are too busy fire-fighting their own crisis especially family issues during their transition. Though he will clearly know quite a lot about transsexualism, it will be from only his own perspective, and it is unlikely he has all of the answers to questions from others. Finally, the letter is both supportive and welcoming to Jerry, and so sets the standards by which all staff within the store are meant to behave.

[Jerry's transition with JLP went extremely well and he stayed with the company for several more years before leaving to open his own, now thriving, art shop.]

The End

Pt. 11. NATIONAL SUPPORT ORGANISATIONS

PRESS FOR CHANGE: BM Network, London WC1N 3XX

'The UK's Leading Experts on Transgender Law'.

Campaign for equal civil rights for Trans people. Provides free legal help and advice for individuals, information and training for professionals, speakers for groups. Produces Legal Guides and other law related publications.

Helpline: **+44(0)08448 708165** (Mon-Thurs 10am – 5pm)

Email: office@pfc.org.uk

website: www.pfc.org.uk

GENDER TRUST: PO Box 3192 Brighton BN1 3WR.

Offers advice and support for 'male to female' Trans women. Also partners, families, carers and allied professionals. Has a membership society and produces a magazine: "Gems".

tel: **01273 424024** (office hours), Helpline: **07000 790347**

email: info@gendertrust.org.uk website: www.gendertrust.org.uk

FTM NETWORK: 35a Fore Street, Wellington, TA21 8AG

Offers advice and support to "female-to-male" Trans men, and to families and professionals. Also a "buddying" scheme, camping and hiking, other sports. Newsletter; "Boys Own" and an annual national meeting.

Helpline: **07811 814 302 / 01823 650 700**

email: info@qwestftmuk.org

website: www.qwestftmuk.org/

BEAUMONT SOCIETY: 27 Old Gloucester St, London WC1N 3XX.

Provides advice and support for cross dresser, but also has some Transsexual women as members. Runs local groups, wives group (Women of the Beaumont Society, WOBS) and produces a newsletter and publications.

Helpline: **01582 412220** (24/7)

email: enquiries@beaumontsociety.org.uk

website: www.beaumontsociety.org.uk/

MERMAIDS: BM Mermaids London WC1N 3XX.

Support and information for children and teenagers who are trying to cope with gender identity issues. Also advice and support for their families and carers. Please send SAE for further information.

Helpline: **0208 1234819** (12 noon - 9pm Monday to Saturday when staffed).

Email: info@mermaidsuk.org.uk

website: www.mermaidsuk.org.uk

DEPEND: BM Depend, London WC1N 3XX

An organization offering free, confidential and non-judgmental advice, information and support to all family members, partners, spouses and friends of transsexual people.

Email: info@depend.org.uk

website: www.depend.org.uk

Pt. 12. HAVE YOU FOUND THIS GUIDE HELPFUL?

Then please consider making a donation to Press For Change(PFC)?

PFC survives through donations from supporters and members of the transgender community. Working on research, attending meetings and campaigning always means we have a lot to do, so if you could spare any small amount of money for a donation you can ensure every penny is used wisely.

WHY WE NEED DONATIONS

Since its formation in 1992, Press For Change has received and spent around £45,000 in donations, which equates to just over £2,000 a year. That makes us almost certainly one of the most frugal lobby groups in existence — operating for twenty years on this tiny amount of money has been a massive challenge in itself. There are many more things PFC would like to be able to do more on but are limited to our resources financially.

YOU can help us continue to provide a service of real value to those that are transgendered or questioning their gender identity.

With the money donated to PFC we've achieved changes in legal protection and support for Trans people which were all at one time considered impossible dreams. Legislation and judicial case law affecting employment rights, the right to NHS treatment, and the Gender Recognition Act have all been shaped by the influence of PFC lobbying and advising politicians and courts. That work still goes on to influence the shaping the protections which we now have with the equality act, but that still need to go further. Every day we are in some kind of contact with civil servants, national agencies and broadcasters arguing a sound case for the all-round improvement in the way that Trans people are supported and enabled to live productive discrimination-free lives.

Most of this work is carried out by volunteers and involves travel and other out-of-pocket expenditure — all of which needs to be found to cover and ensure those volunteers are credited for the time that they put in from somewhere.

Please Consider Making A Donation – details are on the next page.

Make A Donation To Press For Change

PayPal: You can donate using your CREDIT or DEBIT CARD. We can now accept payment of over £10 using Paypal. You do not need a paypal account to use this method of payment. Please go to www.paypal.com & go direct to Paypal. The payments are to be made to **Press For Change**, the required payment email is **office@pfc.org.uk**

By Cheque: You can WRITE A CHEQUE in favour of Press for Change and send it to our address: **Press For Change, Yewbank House, 24 Mauldeth Rd, Stockport, SK4 3NE, United Kingdom**

By Online Banking: You can pay direct, including making a **regular standing order payment**, using your Online or Telephone Banking from the UK or anywhere in the world , direct to our bank. Simply use your online or telephone banking system, or visit or write to your bank and ask them to transfer the amount you want to give to:

**Press for Change,
c/o Natwest Bank PLC,
PO Box 4115, Hornchurch, Essex, RM12 4DF**

Bank Sort code: **60 24 77**

Account number: **19243766**

If making an international donation then you will also need the following IBAN and BIC/Swift Codes

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BIC/Swift Code: **NWBKGB2L**

Please Note, the bank makes a £7 charge for each credit received from the international banking system (CHAPS), so please bear this in mind when deciding how much to give.

If you need an acknowledgment then email us at office@pfc.org.uk and we'll confirm when your payment has been cleared.

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