

DOCUMENT CONTROL	
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The policy set out in this document relates to all employees, Bank Workers, Apprentices, Consultants and former employees.	
Purpose:	
The purpose of this document is to set a framework for how the Trust will support employees who have been through or are initiating the process of gender reassignment.	
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<p>This document has been developed in collaboration with the following interested parties:</p> <ul style="list-style-type: none"> • Stonewall • Transgender Charities • LGBT forum • Trust Solicitor (Hempsons) 	

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Other Trust documentation to which this policy relates (and when appropriate should be read in conjunction with):	
HR007	Managing Attendance at Work
HR014	Special Leave Policy
HR004	Dignity at Work

Policy Associated Documents:	
TAD_HR054_01	Definitions regarding Trans People
TAD_HR054_02	Workplace Transition Action Plan
Other external documentation/resources to which this policy relates:	
	Equality Act 2010
	Gender Recognition Act 2004
CQC Regulations	
This policy supports the following CQC regulations:	

Contents Page

1.	Introduction	5
2.	Purpose	5
3.	Responsibilities, Accountabilities & Duties	5
4.	Definition	6
5.	Legislation	6
6.	Data Protection Act	8
7.	Gender Recognition Certificate and Non-disclosure	8
8.	Notification of intention to Transition	9
9.	Developing a joint plan for managing the transition at work	9
10.	Relocation, remaining at same location or redeployment	10
11.	Informing colleagues	10
12.	Briefing of colleagues	11
13.	Payroll / HR Records	11
14.	Sponsor for Transitioning Employee	12
15.	Protection against bullying and harassment	12
16.	Changing and Toilet Facilities	12
17.	Appropriate Clothing	13
18.	Recruitment Compliance	13
19.	DBS Procedure	13
20.	Pensions	14
21.	Expected Timescales and Time off for Medical Procedures	14
22.	Identifying what managers and colleagues can do to make the transition	15
23.	Equality Impact Analysis	16
24.	Freedom of Information Exemption Assessment	16
25.	Information Governance Assessment	16
26.	Safeguarding	16
27.	Monitoring	17
28.	Review	17

1. INTRODUCTION

The purpose of this policy is to set a framework for how the Trust will support employees who have been through or are initiating the process of gender reassignment.

This policy also supports the Trust in meeting the requirements of the Equality Act 2010, which lists gender reassignment as one of the nine 'protected characteristics' on the grounds of which people are protected against unlawful discrimination. This policy also sets out the Trust's obligations under the Gender Recognition Act 2004.

This policy should be read in conjunction with the Managing Attendance at Work and the Special Leave Policy

2. PURPOSE

The purpose of this policy is to provide support and understanding to those individuals who wish to take, or have taken steps to live in the gender they identify with rather than the one assigned to them at birth. The Trust recognises that the period of transition can be very complex and difficult for the individual, and wishes to act in a supportive and sensitive way during the transition period.

The Trust, through this policy and others, will become an inclusive Trans-friendly place to work.

3. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

The Board will approve this policy and be responsible for ensuring that it is adhered to.

The Director of Workforce and OD is responsible for ensuring equal opportunities for all employees and for maintaining correct adherence to Trust policies and procedures.

Equality and Diversity Working Group will monitor the effectiveness of this policy.

Managers have a duty to establish and maintain a safe working environment, free from discrimination, for all staff, will ensure that staff are aware of and comply with this policy and will provide support to employees if they ask for support.

Trade Unions and HR will provide advice and support and work with the Trust to monitor the effectiveness of this policy.

All Staff are responsible for their own behaviour and are expected to comply with the policy, ensuring they treat Transgender colleagues with dignity and respect

4. DEFINITION

In this policy 'Transgender' (Trans) is used to refer to the following individuals:

- People covered by the Equality Act definition: "A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process, or part of a process, for the purpose of reassigning the person's sex by changing physiological or other attributes of sex".
- People who identify as genderqueer, gender variant or intersex or who choose to live permanently with a more fluid gender identity.

"Transition" refers to the process of changing gender from the one assigned at birth to the individual's gender identity. It is intended that this definition extends beyond the definition of gender reassignment set out in the Equality Act 2010 – See TAD_HR054_01.

5. LEGISLATION

The following legislation provides some of the protections Trans employees are guaranteed under law in the workplace.

- General Data Protection Regulation (2016) and Data Protection Act (2018)
- The Human Rights Act 1998
- The Gender Recognition Act 2004 – this is only relevant where someone has a Gender Recognition Certificate
- Equality Act 2010

The Equality Act 2010 (The Act) protects people on the basis of gender reassignment from direct and indirect discrimination and harassment. This includes discrimination by association and discrimination against people perceived to have the protected characteristic of gender reassignment.

The Act also places a proactive duty on public organisations through the Public Sector Equality Duty (PSED) to promote equality of opportunity, foster good relations and eliminate unlawful discrimination between people who have the protected characteristic of gender reassignment and people who do not.

The Act states that:

1. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing, or has undergone a process (or part of a process) for the purpose for reassigning the person's sex by changing physiological or other attributes of sex.

2. A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

i) Discrimination

For example, if a person is treated less favourably because of their protected characteristic.

ii) Harassment

For example: a person engages in unwanted conduct against another person related to a relevant protected characteristic, which has the purpose or effect of violating the other person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the other person.

Section 7 of the Equality Act 2010 defines the protected characteristic of gender reassignment as follows:

- A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process or part of a process for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

In relation to the protected characteristic of gender reassignment

- A reference to a person who has a particular protected characteristic is a reference to a transsexual person
- A reference to persons who share a protected characteristic is a reference to transsexual persons.

Key points to remember about the definition

- A person who is 'proposing to undergo' the process of changing their sex is protected. They need not have undertaken any actual steps towards the process of transitioning.
- A person undergoing transition is protected, even if they have not fully transitioned. They may simply be living in the opposite gender without having embarked on hormonal or other therapy.
- A person who is living in the opposite gender, but has decided never to undergo hormonal or surgical intervention, for example, because they successfully pass as being of the opposite gender, would be protected.
- There is no requirement to be under medical supervision to qualify for protection.

- There is no requirement to have a Gender Recognition Certificate – GRC – in order to be protected.

There is no protection for those who are:

- Agender
- Non-binary gender
- Gender neutral
- Genderqueer
- Intersex
- Transvestite

Genuine Occupational Requirements

There may be times when there is a work requirement to employ a particular protected characteristic because of the nature of the work, it is an occupational requirement and it is proportionate to achieving a legitimate aim, this might mean that you would specifically indicate that the post was not suitable for a transsexual person as example might be:

‘A counsellor working with victims of rape might have to be a woman and not a transsexual person, even if she has a Gender Recognition Certificate, in order to avoid causing the victims further distress’

Each case should be assessed on its merits with consideration given to where on the journey the person is who is transitioning.

In circumstances where you believe that a GOR is required you should contact HR for further advice.

6. DATA PROTECTION ACT

For the purposes of the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) 2016, gender reassignment and any information appertaining to an individual’s gender history would constitute ‘sensitive data’ which can only be processed for certain specified reasons, as set out in the GDPR and Data Protection Act 2018.

7. GENDER RECOGNITION CERTIFICATE AND NON-DISCLOSURE

Under the Gender Recognition Act 2004, it is a criminal offence for any individual who has obtained information in an official capacity to divulge that a person has a Gender Recognition Certificate or do anything that would make such a disclosure.

There is an exception where:

- The disclosure is made to a healthcare professional
- The disclosure is made for medical purposes (directly relevant to the treatment)
- The person making the disclosure reasonably believes that the subject has given consent to the disclosure or cannot give such consent.

All staff in the Trust will respect the confidentiality of all Trans employees and will not reveal information about their Trans status or process of transition without the prior consent of the individual. This duty of confidentiality extends beyond the duties set out under the Gender Recognition Act 2004, mentioned in paragraph section 5 – Legislation.

Staff are also reminded that details of gender identity will be “sensitive personal data” under the GDPR and Data Protection Act 2018.

Managers and those who have acquired protected information in an official capacity should not disclose the information to any other person without the express consent of the employee transitioning

8. NOTIFICATION OF INTENTION TO TRANSITION

Employees proposing to transition are encouraged to speak to their manager as early as possible in order that they can be supported.

When an employee notifies the Trust of their intention to transition the Trust will with meet with them to agree with them a date from which their gender is changed on all their records.

A Transgender employee’s personal file and ESR Records should be changed to reflect their chosen name and gender

Any records kept in the Trust that relates to the employees Trans status should be stored confidentially.

No records which directly or indirectly refer to the individual’s gender identity should be changed without the permission of the employee concerned – See TAD_HR054_02.

9. DEVELOPING A JOINT PLAN FOR MANAGING THE TRANSITION AT WORK.

Once a member of staff has indicated their intention to start the transition process, their line manager will suggest a meeting with them and HR. It is the member of staff’s choice as to whether they wish to accept this invitation.

The employee should be given the opportunity to arrange to be accompanied, should they wish, by a trade union representative or work colleague.

No plans and actions, for example advising the employees work colleagues should be made without the written consent of the transitioning employee.

The purpose of that meeting would be to ascertain:

- The expected point, or phase, of change of name, personal details and gender.
- Confirming who they want as their main point of contact within the organisation.
- Whether the employee wishes to inform their colleagues themselves, or would prefer this to be done for them.
- The expected timescale and time off for related appointments.
- Agreeing the point at which the individual will commence using single sex facilities in their new gender.
- What amendments will need to be made to their records?

If a transsexual member of staff is working in a gender specific role, for example a female working with female service users, consideration would need to be given to the implications should they transition to a male as they may no longer be able to fulfil the gender specific requirement for the role. A risk assessment would be carried out and adjustment to duties may need to be considered. If it is reasonably considered that the individual is unable to continue in their current role, they would be placed on the redeployment register.

10. RELOCATION, REMAINING AT SAME LOCATION OR REDEPLOYMENT

Transition plans and support will be provided as appropriate and will be agreed in consultation with the Trans member of staff.

11. INFORMING COLLEAGUES

It is good practice for employers to take responsibility for informing whoever needs to know, unless the individual going through the process would prefer to do this. However, employers/managers should not inform colleagues, clients and the public that an employee is intending to undergo, or is undergoing, gender reassignment, without the individual's explicit consent. If the individual prefers to inform people themselves, then ideally the employer/manager should be advised when the disclosure is to take place and in what detail, so that they can provide appropriate support.

There will be some others who need to know for administrative processes, such as Payroll, however confidentiality should be maintained.

Once the transition period is complete, it is never appropriate to inform colleagues, clients and the public that an employee had in the past undergone gender reassignment, except in the limited circumstances referred to in Section 5 Legislation.

12. BRIEFING OF COLLEAGUES

A plan for support both during and after the transition will be needed to address such questions as what information will need to be provided for colleagues. At the point of change of gender, it is common for transgender people to take a short time off work as annual leave and return in their new name and gender role. If this is the case, this period can be used as an opportunity to brief colleagues and to ensure that managers stress the need for proper treatment of the employee. All briefings should be complete by their return. Other arrangements should be made in consultation with the Transgender person who does not take leave.

Education should take place for all staff in the Trust about Transgender

13. PAYROLL / HR RECORDS

Payroll and HR should be informed about the transition and name change. This should include:

Providing evidence of change of name – in the form of any of the following: A Name Change Deed (e.g. Statutory Declaration); Driving licence, Passport.

On receiving this information, the Trust will take all reasonable steps to ensure that, as soon as reasonably practicable, all documents, public references (such as telephone directories, prospectuses, web biographies) and employment details reflect the acquired gender of the person. This will prevent any breach of confidentiality. Where documents have been seen and copies taken at the point of starting employment (such as a birth certificate) then every effort should be made to replace those with equivalent documents in the new name and gender. It is the responsibility of the employee to provide new versions of documentation.

To maintain confidentiality, where possible new records should be produced; for instance the cover of a personnel file should be replaced and a new name included rather than the old file have the name crossed out and replaced.

It should be noted that once a person has obtained a Gender Recognition Certificate existing records showing the gender assigned at birth **MUST** be replaced with the new

details; however, it is the responsibility of the employee to provide updated documentation e.g. qualification certificates.

14. SPONSOR FOR TRANSITIONING EMPLOYEE

An employee transitioning whilst employed by the Trust will be able to access a Senior Manager who will act as their Sponsor during the transition period.

The sponsor may act on their behalf when engaging with other departments e.g. HR or may support them in the meetings.

15. PROTECTION AGAINST BULLYING AND HARASSMENT

All employees of the Trust are required to adhere to the standards laid out in the Dignity at Work Policy.

It is an offence under the Gender Recognition Act for a person who has acquired protected information in an official capacity to disclose the information to any other person. To do so may attract a level 5 fine.

Employees alleged to have been involved in Transphobic bullying and harassment will be investigated under the appropriate policy

16. CHANGING AND TOILET FACILITIES

The employer and employee should agree the point at which the use of facilities from one gender to the other should change. It is advised that the individual starts to use the facilities for their new gender at the point where they begin to live in that gender, irrespective of the progress.

Under no circumstances should they be expected, after transitioning, to use the facilities of their former gender. Provision is available in the Trust for transgender employees and other employees wishing or needing increased privacy to use the unisex toilet facilities. These facilities are clearly marked. There is no requirement to use these unisex facilities, however.

17. APPROPRIATE CLOTHING

An employee living in the opposite gender as part of the transition process should be allowed to wear the appropriate clothing to which they are transitioning. The point at which the employee wishes to do this should be discussed with them, but it will normally be on the first day of the 'real life' part of the transition process, i.e. when that person starts living in the opposite gender.

Name badges, information boards, telephone directories etc. should also reflect the gender to which the person is transitioning. This should all be done with the consent of the employee.

18. RECRUITMENT COMPLIANCE

Former Names: NHS Jobs does not require applicants to state former names.

Equal Opportunities Form: NHS Jobs does have a drop down to select Gay, Lesbian, Bisexual, Heterosexual or do not wish to disclose sexual orientation. There is currently no option for Trans.

Proof of Identify: NHS identity verification documentation is varied and should provide enough scope for Trans applicants to provide documentation in their acquired gender only if they have a certificate otherwise the Equality Act is clear if a person says that they are Trans then they should be treated as Trans.

Certificates: Where evidence of educational qualifications will disclose a previous name and therefore previous gender identity, then total confidentiality must be respected and measures taken to ensure it. An example of how this can be achieved is outlined below:

A candidate has transitioned and does not want their circumstances shared however their certificate shows their previous name and gender. Recruitment could produce a list of all the candidates by candidate number and then provide details of the certificates plus confirmation that they have seen the originals. This would ensure that the transitioned candidate has not had information disclosed about them, but the information has been shared in a way that does not disadvantage other applicants as well.

19. DISCLOSURE AND BARRING SERVICE PROCEDURE

DBS applications need not be a problem for Trans people. There is a special process which they can follow in order to avoid the problems they would otherwise face in complying with the requirement to make truthful statements and revealing their gender history. The DBS has a dedicated number for Transgender people to ring which is 0151 676 1452 or email sensitive@dbs.gsi.gov.uk

Disclosures sent to the employee and their employer will not reveal the applicant's former identity unless they have an offence or caution that is not 'protected' (as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)) that has been recorded in that name in police records. If this happens the Police National Database (PNC) will automatically print these off in the old name under the new name and gender on the form.

In this instance the DBS office (if they have been contacted prior to the DBS submission via the contact details above) will stop the process and get in touch with the Trans person, allowing them time to change their details on the PNC. They will then issue the certificate with all names the same.

20. PENSIONS

As a minimum, the individual should be treated as a member of their acquired gender from the date of transition. However, participation in the NHS Pension Scheme is subject to the rules of that Scheme which are outside of the control of the Trust.

A transgender person who received a full Gender Recognition Certification (GRC) will be treated according to their acquired gender for state pension purposes. This means that their state pension age will be the same as for other members of their acquired gender.

Transgender people who do not obtain a full Gender Recognition Certificate retain their state pension rights in accordance with the sex that is recorded on their birth certificate. A transgender woman without a full Gender Recognition Certificate who is working beyond the age of sixty is able to make separate arrangements for the payment of national insurance contributions so as to retain her privacy in the workplace.

In terms of the NHS occupational pension scheme, an individual should seek advice from the Payroll Department, and any such conversations would be held in strict confidence with the Pensions Manager.

21. EXPECTED TIMESCALES AND TIME OFF FOR MEDICAL PROCEDURES

The law recognises that someone who is undergoing a medical transition to their new gender will sometimes require substantial periods of time off work in order to undergo treatment. As far as possible, managers should discuss how much time the individual will need to undergo gender reassignment treatment.

The law does not specify a minimum or maximum time that employers should allow for transitioning. Absences will be managed in accordance with the Trust's Managing Attendance at Work Policy or other relevant policy relating to the management of absence, with such adjustments as the Trust consider to be appropriate.

An employee who undergoes medical or surgical treatment relating to gender reassignment will receive appropriate support for this. It will be managed through the Trust's Managing Attendance at Work, Special Leave and Flexible Working Policies. Managers should try to offer flexibility to individuals who may need to take holiday or rearrange working hours in order to attend additional appointments (for instance for electrolysis) outside of work.

Managers should remember that it would constitute unlawful discrimination if they treat an individual undergoing gender reassignment less favourably than someone who is absent for some other medical reason where it would be reasonable to allow a similar amount of time off work.

22. IDENTIFYING WHAT MANAGERS AND COLLEAGUES CAN DO TO MAKE THE TRANSITION EASIER

All members of staff should refer to the Trans person by their new name and use pronouns appropriate to their new gender role. In the early days it is recognised that people may occasionally get mixed up and use the Trans person's former name and/or gender pronouns. Managers should discuss the potential for this with the Trans persons in the planning meeting. The transsexual person should be aware that this could happen and be prepared to make allowances.

Managers must also be aware of the genuine concerns that members of staff may have, and resolve any issues quickly through sympathetic guidance, support, information and education. In such instances though, the Trans person's right to be themselves should not be compromised or questioned.

It is respectful to use a Trans person's chosen name, not their birth name and it is never appropriate to put quotation marks around either the Trans persons' chosen name or the pronoun that reflects their gender identity.

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

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

23. EQUALITY IMPACT ANALYSIS

As part of its development, this document was analysed to consider / challenge and address any detrimental impact the policy may have on individuals and or groups protected by the Equality Act 2010. This analysis has been undertaken and recorded using the Trust's analysis tool, and appropriate measures will be taken to remove barriers and advance equality of opportunity in the delivery of this policy / procedure

24. FREEDOM OF INFORMATION EXEMPTION ASSESSMENT

Under the Freedom of Information Act (2000) we are obliged to publish our policies on the Trust's website, unless an exemption from disclosure applies. As part of its development, this policy was assessed to establish if it was suitable for publication under this legislation. The assessment aims to establish if disclosure of the policy could cause prejudice or harm to the Trust, or its staff, patients, or partners. This assessment has been undertaken using the Trust's Freedom of Information Exemption Guide, and will be reviewed upon each policy review.

25. INFORMATION GOVERNANCE ASSESSMENT

This Policy has been analysed to ensure it is compliant with relevant information law and standards as in place at the time of approval, and are consistent with the Trust's interpretation and implementation of information governance components such as data protection, confidentiality, consent, information risk, and records management.

Compliance will be reviewed against any changes to legislation / standards or at the next review of this document.

26. SAFEGUARDING

All staff have a responsibility to promote the welfare of any child, young person or vulnerable adult they come into contact with and in cases where there are safeguarding concerns, to act upon them and protect the individual from harm.

All staff should refer any safeguarding issues to their manager and escalate accordingly in line with the Trust Safeguarding Families Policy and Local Safeguarding Children/Adult Board processes.

27. MONITORING

The effective application of this policy, including adherence to any standards identified within will be subject to monitoring using an appropriate methodology and design, such as clinical audit.

Monitoring will take place on a biannual basis and will be reportable to the Quality Group via the Clinical Effectiveness and Quality Improvement Team.

28. REVIEW

This policy will be reviewed three-yearly unless there is a need to do so prior to this; e.g. change in national guidance.