

Guidance for Trans Inclusion in the Workplace



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‘Delivering Excellence in Healthcare through Innovation and Collaboration’

Please be advised that the Trust discourages the retention of hard copies of policies and procedures and can only guarantee that the policy on the Trust Intranet is the most up to date version

Table of Contents

1. INTRODUCTION/PURPOSE.....	3
2. SCOPE.....	3
3. PROCESS.....	3
4. DEFINITIONS.....	7
5. RESPONSIBILITES / DUTIES.....	9
6. ASSOCIATED DOCUMENTS.....	9
7. CONSULTATION WITH STAKEHOLDERS.....	9
8. IMPLEMENTATION.....	9
9. EDUCATION TRAINING.....	10
9. MONITORING AND REVIEW.....	10
10.REFERENCES.....	10
11. VERSION CONTROL.....	12
12. EQUALITY IMPACT ASSESSMENT.....	13
Appendix 1 – LGBT+ Glossary and factsheet	

1. INTRODUCTION / PURPOSE

This guide is intended to highlight the key issues that Trust staff should be aware of for supporting trans people in the workplace. It is designed to help to identify and remove barriers that trans people face in employment to increase staff confidence.

This guide provides an important base of knowledge. As with most issues about staff needs and wishes when in employment, the most important thing is to listen to and respect needs and to be able to respond in an effective and timely manner. For some trans people, isolation due to social rejection means that they may not have a solid support network and this can mean increased vulnerability.

It is the policy of MCHFT that no one will be discriminated against on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. The Trust will provide interpretation services or documentation in other mediums as requested and necessary to ensure natural justice and equality of access.

2. SCOPE

The guidance will apply to all employees in the Trust, including bank staff.

3. RELEVANT LEGISLATION AND PROCESS

The Equality Act 2010

The Equality Act 2010 provides legal protection from discrimination and harassment. Gender reassignment is one of the nine protected characteristics covered by the Act. A person has the protected characteristic of gender reassignment if that person is proposing to undergo, is undergoing or has undergone a process, or part of a process for the purpose of reassigning their sex by changing physiological or other attributes of sex.

A reference to a person who has the protected characteristic of gender reassignment is a reference to a transgender person, for example a woman making the transition to being a man. This means that they may use a new name and dress differently. Some may have medical treatment but this is not necessary to be protected by law i.e. a person living in the opposite gender without having undergone any medical procedures will be protected. A person does not have to hold a Gender Recognition Certificate in order to be protected under the Act.

Under the Act, there is also specific protection for those who are absent from work because of gender reassignment. An employer is guilty of gender reassignment discrimination if, in relation to a transgender employee's absence from work because of gender reassignment, it treats the employee less favourably than it would have done had the employee been absent because of sickness or injury.

Very rarely it is an occupational requirement of a role that it is done by someone of a particular sex. This is known as a 'Genuine Occupational Requirement'. This means that gender reassignment discrimination may be permitted in certain limited circumstances. This enables employers, in limited circumstances, to require that, having regard to the nature or context of the work, only people who are not transgender can do the job. In order to claim this, the employer must show that applying the requirement is a proportionate means of achieving a legitimate aim.

Gender Recognition Act 2004

The Gender Recognition Act 2004 ('the GRA 2004') allows transgender people to gain legal recognition of their acquired gender by registering for a Gender Recognition Certificate (GRC). In order to obtain a GRC, an individual must have been diagnosed with gender dysphoria, lived in their acquired gender for at least 2 years and be intending to live in their acquired gender for the rest of their lives. Not all trans people apply for a GRC. There may be a number of reasons for this including health, family or personal reasons.

The GRA 2004 allows those who have changed their gender role permanently to obtain a new birth certificate, affording them recognition of their acquired gender in law for all purposes. If a person has applied for or holds a GRC, information about the person's gender history is described as protected information so must not be passed on to anyone without permission unless there are certain prescribed circumstances, such as the disclosure being for the purpose of preventing or investigating crime. This includes information that a person has acquired through an official capacity i.e. via the recruitment process. To do so could be a criminal offence and is a serious disciplinary offence.

It is important to note that it is not an offence under section 22 GRA 2004 to disclose protected information if:

- The disclosure is made to a health professional (a registered medical professional, a registered dentist, a registered nurse, someone who is registered under the Health and Social Work Professions Order 2001 as a paramedic or operating department practitioner or a person working lawfully as a trainee capacity in any of these professions specified)
- The disclosure is made for a medical purpose, AND
- The person making the disclosure reasonably believes that the subject has given consent to the disclosure or cannot give consent

A medical purpose includes the purposes of preventative medicine, medical diagnosis and the provision of care and treatment.

3.1 Recruitment

In the case of the Disclosure and Barring Service (DBS) there is no requirement for a person to reveal that they are transgender. Whilst it is still a requirement that they disclose all previous names to the DBS, they can do this without revealing it to the Trust. The Disclosure and Barring Service have a specific service where candidates and staff don't want to reveal details of their previous identity. The team can be contacted at sensitive@db.sgs.gov.uk, 0151 676 1452 or in writing to Sensitive Applications Team, Customer Services, POX 165, Liverpool, L69 3JD

During an interview, candidates may not wish to disclose their trans status. The interview panel should not ask this question. If a candidate volunteers information at interview that they intend to transition, the interview panel should thank the candidate for their openness and explain the support available if they are successful in their job application.

In respect of the identity/documentation checks, HR will only retain what documentation is needed and ensure that such information is stored securely and confidentially and will only be shared with the trans person's consent.

3.2 Planning for transition at work

Trans people are often afraid that their employer and their colleagues will react badly when they disclose their intention to transition. Planning for transition at work is likely to require a set of conversations with the member of staff who is intending to transition. Managers are advised to listen and show support and take advice from HR where necessary. A series of review meetings

should be scheduled, at an agreed frequency as part of any action plan, and at any significant stage of the process. An action plan should cover the following: -

- Dates and timescales – what the likely timing is, how much time off will be required for medical treatment, at what point does the member of staff wish to start living publicly in the required gender.
- Who needs to be involved, e.g. a manager, occupational health
- What sort of announcement might be made and when and who to. The manager and the individual should work out together how to best inform work colleagues about the plan to transition. Will this be via a team meeting or on a 1:1 basis? Any announcement should only be made with explicit consent from the individual who is transitioning.
- What records and systems need to be changed, when will this happen and what will happen to old records? There is a need to consider any historical information on records e.g. reference to a previous period of maternity leave for a transgender man). Payroll and national insurance records will need to be adjusted in addition to Trust IT systems. Managers are to devise a list of all IT systems that holds personal data or references an individual employee.
- Point of change and use of toilets, locker rooms, new uniform and name badges etc. New uniforms should be ordered well in advance.
- What are the implications for pensions?

Managers should agree with the trans employee where the action plan or any meetings notes will be stored and who has access to them.

3.3 Transphobia and transphobic language in the workplace

Transphobic language can create a hostile environment which is unproductive, harmful and in cases illegal. Staff at all levels should be confident in calling out and confronting transphobia. Staff are advised that any incidents of this nature are to be reported via the Trust incident reporting system.

Examples

Disclosure of someone's gender history without their consent– For some people, their gender history is a part of their past following their transition. It is an individual's choice as to whether they wish to disclose this and they should not be forced to disclose their gender history or have others disclose this without consent.

Inappropriate questioning about medical treatment – This is offensive and invades privacy. Not all trans people are able to have or want gender reassignment surgery and their identity and privacy should be respected.

Questioning someone's ability to 'pass' – 'Passing' refers to when a trans person 'passes' for someone who isn't trans. A person's gender identity should be respected regardless of whether they conform to standard notions of gendered beauty. Telling someone they could be more 'convincing' is insulting and degrading.

Transphobia or use of transphobic language will not be tolerated and will be dealt with under the Trust Disciplinary Policy and Procedures.

3.4 Privacy, confidentiality and record keeping

Trans status should be handled sensitively and confidentially at all times. Trans people may have some people in their life who know that they are trans, but others who do not. Trans people are less likely to be in touch with their family of origin, so may have alternative family structures with

partners, friends and others. There may be sensitivities around their gender identity with their families.

Names and titles must be changed to reflect the individual's current gender status. This is not dependent on having a Gender Recognition Certificate. There is a requirement by banks and some other services to submit a Statutory Declaration or a Deed Poll document. The changes to the individual's records are managed under the Data Protection Act 1998. The Trust must ensure that previous names, titles and pronouns which appear in old documents, cannot be seen except by the small number of people who are authorised to see them.

Where an employee has transitioned, this will involve issuing them with a new set of HR records. Records following transition should refer only to the person's new name and gender. If asked for an employment reference from someone who has since transitioned since leaving employment, it is advisable to contact the individual to discuss the reference. The content of the reference in terms of capabilities and experience will be the same but care must be taken around the correct use of names and pronouns. This should be agreed with the ex-employee where possible.

Hard copies of any documentation that cannot be altered or replaced must be stored securely in a sealed envelope marked strictly confidential and kept separately away from the files of other employees. The names of those that are allowed to open these envelopes (following agreement with the trans employee) should be written on the outside. All IT records of the individual's personal file should be secured in line with the Data Protection Act.

Extra caution is needed when security checks and medical screening are undertaken. Any information arising from these checks that could reveal a person's trans history must be restricted to the staff whose specific duties are involved and must understand the need for complete confidentiality.

Confidentiality is key. Unnecessary and unwanted disclosure of the trans status of staff without consent is bad practice and, as previously mentioned, could amount to serious misconduct under the Trust's Disciplinary Policy as well as having the potential to be considered a criminal offence. As set out above, it is a criminal offence under the GRA 2004 to disclose a trans person's (who has applied for or has a GRC) gender history without their consent.

3.5 Use of single-sex facilities and shared accommodation

Facilities such as toilets and changing rooms should be accessed according to the full time presentation in the new gender role. It is not appropriate to insist that the person who has transitioned use only the facilities that are meant for disabled people, unless they are preferred by the trans person. Whether the person has a Gender Recognition Certificate or not is irrelevant.

3.5 Time off for medical appointments

Time off for treatments associated with gender reassignment are specifically protected under the Equality Act 2010 and therefore individuals cannot be treated less favourably if they take time off as part of the gender reassignment process.

Absences for appointments or medical reasons due to the transition process may be recorded but will not be used for the Trust's absence management process.

4. DEFINITIONS (please also refer to Appendix 1)

Transgender or trans person – an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with the sex they were assigned at birth.

Gender Identity – a person's internal, deeply held sense of their own gender. For trans people, their own sense of who they are does not match the sex that society assigns to them when born.

Gender Reassignment - the process of changing or transitioning from one gender to another. Under the Equality Act 2010 it refers to a person who is proposing to undergo, is undergoing or has undergone a process of reassigning their sex by changing physiological or other attributes of sex. This could involve medical intervention, but this is not required for a person to identify as trans. This can mean changing names and dressing differently.

Transgender man – people who were assigned female at birth but identify and live as men,

Transgender woman – people who were assigned male at birth but identify and live as women.

Non-binary – this is a term used for people whose gender identities do not fit into the gender binary of male or female. A non-binary person might consider themselves to be neither male nor female, or in some cases both male or female, or to be sometimes male and sometimes female. People who identify as non-binary will sometimes prefer to refer to themselves using pre-nouns which are not gendered, for example 'they'.

Transitioning – this is a term used to describe the steps a trans person may take to live in the gender they identify as. This transition can involve different things for each person. This could include medical interventions, such hormone therapy or surgery, telling friends or dressing differently.

Sexual orientation – a person's emotional, romantic and/or sexual attraction to another person.

Gender Recognition Certificate (GRC) enables trans people to be legally recognised in their self-identified gender and to be issued with a new birth certificate. Not all trans people will or want to apply for a GRC. An employer or service provider does not need to see a GRC in order to recognise an employee's or service user's gender.

Points to note:

- The words trans and transgender should be used as adjectives, not as nouns, i.e. X is transgender, rather than X is a transgender.
- Being trans is not a sexual orientation; it is about someone's gender identity (as a man, woman, neither or both). Being trans doesn't predict sexual orientation; it is an additional layer to one's personal identity.
- Refer to transition rather than sex change
- A trans woman or a trans man should be referred to as simply a woman or a man unless there is a clear reason, agreed by the person concerned, to mention that they are trans.
- Whatever their medical needs, trans people should be addressed according to the gender in which they present, unless they specify otherwise. If staff are unsure about whether to address an individual as Mr, Miss, Ms or Mrs, it is better to ask discreetly.

- Remember it is offensive to trans people to be referred to as 'transvestite'. Transvestites are often happy with their gender and have no desire to change their sex.

5. RESPONSIBILITIES / DUTIES

Manager Responsibilities:

- Communicating the Guidance for Trans Inclusion in the Workplace to staff
- Ensure compliance with the Guidelines, providing fairness and consistency when making decisions

Employee Responsibilities:

- Comply with the information as outlined in the Guidelines
- Ensure this Guidelines are understood and adhered to

Human Resources Responsibilities:

- Provide advice and support to employees and managers on the application of these Guidelines
- Ensure that the Guidelines are applied consistently across the Trust
- Ensure the Guidelines are communicated effectively

6. ASSOCIATED DOCUMENTS

Equality, Diversity & Human Rights Policy
Guidance for Staff Providing Acute Healthcare to Trans People
Disciplinary Policy and Procedure
Privacy and Dignity Policy
Corporate Records Management Policy
Clinical Records Keeping Standards (General Health Records) Policy
Confidentiality and Data Protection Policy

7. Consultation and Communication with Stakeholders

This procedure has been developed in consultation with Stakeholders, including members of the Equality ,Diversity and Inclusion Group, Hill Dickinson and Body Positive.

8. Implementation

The guidelines will be implemented through dissemination to managers within the Trust.
The guidelines will be published on the Intranet site.

9. Education & Training

The guidelines will be published on the Trust intranet and also via Team Brief. The principles of the guidance will be incorporated into the Trust equality and diversity training.

10. MONITORING AND REVIEW

The policy will be reviewed after 3 years through the Equality, Diversity & Inclusion Group.

Standard/process/issue required to be monitored	Monitoring and Audit			
	Process for monitoring e.g. audit	Responsible individual /group	Frequency of monitoring	Responsible committee
1. Guidance	Guideline review	HR Manager (Equality & Diversity)	3 years	Equality, Diversity and Inclusion Group

9. REFERENCES AND FURTHER INFORMATION

First steps to trans inclusion - An introduction to trans inclusion in the workplace, Stonewall

Getting it right with your trans service users and customers, Stonewall

'T is for Trans' Robin Moira White and Nicola Newbegin, Old Square Chambers

Trans – A Practical Guide for the NHS, Department of Health.

Equality and Diversity Transgender Policy Guide for Employers, GRES

Bereavement: A guide for Transsexual, Transgender people and their loved ones, Department of Health.

Provision of goods, facilities and services to trans people, Equality and Human Rights Commission.

Medical Care for Gender Variant Children and Young People: Answering Families' Questions. Department of Health

Websites:

Stonewall

http://www.stonewall.org.uk/sites/default/files/first_steps_to_trans_inclusion_2016.pdf

http://www.stonewall.org.uk/sites/default/files/getting_it_right_with_your_trans_service_users_and_customers.pdf

Department of Health

<https://www.gires.org.uk/assets/DOH-Assets/pdf/doh-trans-practical-guide.pdf>

Trans Resource and Empowerment Centre (TREC) <http://www.transcentre.org.uk/>

Gender Identity Research and Education Society (GIREs) <http://www.gires.org.uk/transpeople.php>

Press for Change <http://www.pfc.org.uk/>

Equality and Human Rights Commission <http://www.equalityhumanrights.com/>

NHS North West Health Equality Library Portal <http://help.northwest.nhs.uk/>

10. Version Control

VERSION CONTROL SHEET			
Date dd/mm/yy	Version	Author	Reason for changes
June 2017	1	HR Manager	New guidance
August 2020	2	Workforce Business Partner	Guidance review due

Equality Impact Assessment

Please read the Guide to Equality Impact Assessment before completing this form.
The completed assessment is to form part of the policy/proposal/business case appendices when submitted to governance-policies@mcht.nhs.uk for consideration and approval.

POLICY/DOCUMENT/SERVICE.....

SECTION A

A	Does the document, proposal or service affect one group less or more favourably than another on the basis of:	Yes/ No	Justification & data sources. Include nature of impact. Also record provisions already in place to mitigate impact.
1	Race, ethnic origins or nationality	No	No issues identified at present
2	Sex	No	No issues identified at present
3	Transgender	Yes	Guidance specifically relates to transgender staff
4	Pregnancy or maternity	No	No issues identified at present
5	Marriage or civil partnership	No	No issues identified at present
6	Sexual orientation including lesbian, gay and bisexual people	No	No issues identified at present
7	Religion or belief	No	No issues identified at present
8	Age	No	No issues identified at present
9	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	No issues identified at present
10	Economic/social background	No	No issues identified at present
B	Human Rights – are there any issues which may affect human rights		
1	Right to Life	No	
2	Freedom from Degrading Treatment	No	
3	Right to Privacy or Family Life	No	
4	Other Human Rights (see guidance note)	No	

Equality Impact Assessment completed on 8th August 2020 by Natalie Wallace, Workforce Business Partner.

Where an impact has been identified in Section A, please outline the actions that have been agreed to reduce or eliminate risks in Section B.

If there are no impacts identified in Section A, completion of Section B is not necessary.

SECTION B

Please expand tables below as necessary

SECTION B NUMBER A1-10, B1-4	NATURE OF IMPACT	EVIDENCE	STAKEHOLDER INVOLVEMENT	ACTION	COST	LEAD	TIMESCALE	RISK SCORE

Appendix 1

LGBT+ glossary



Ace – Someone who experiences very little romantic and/or sexual attraction (aromantic or asexual).

Agender - Someone who identifies as having no gender or being without a gender identity (also called genderless, non-gendered or ungendered)

Bisexual- Someone who is sexually attracted to both men and woman.

Binding – When someone with breasts uses a binder or alternative material to push breasts tight to the chest, giving the appearance of a flatter chest. This can cause serious health problems if done incorrectly, or without a binder fit for purpose.

Cisgender/Cis – Someone whose gender identity matches with the sex they are born with.

Deadnaming – Using someone's birth name after they've changed their name.

Demisexual – When someone needs to develop a deep meaningful connection with someone before romantic/sexual feelings occur.

Gay – Someone who is sexually attracted to the same gender as themselves (mostly commonly used in men).

Gender Dysphoria – When discomfort or distress are caused by someone's gender identity not matching the sex they were assigned at birth.

Gender Identity – A person's internal sense of being male, female, some combination of male and female, or neither male nor female.

Intersex – When a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male.

Lesbian – A woman who is only sexually attracted to other woman.

Non-Binary – A gender identity that is not exclusively masculine or feminine; this may be a combination of both or neither.

Pan – Someone who can be romantically and/or sexually attracted to anyone, regardless of gender (panromantic or pansexual).

Queer – A term used by those wanting to reject specific labels of sexual of sexual orientation and/or gender identity. This has previously been used as an insult to LGBT+ people so some still consider it an offensive term.

Sex – The anatomy of an individual's reproductive system (usually either male or female).

Sexuality – A person's sexual orientation or preference.

Transgender – Someone whose gender identity does not match with the sex they are born with.

Transsexual – This was used in the past as a more medical term to refer to transgender people. This term is still used by some, although many people prefer the term trans or transgender and some find the term "transsexual" offensive and outdated.

LGBT+ factsheet

How to support an LGBT+ person 😊

- Say you appreciate their trust in you
- Be cool
- Ask if there is any support you can offer
- Don't gossip with colleagues and/or out other people
- Ask if they know about local services

How to be an LGBT+ ally in the workplace

- Support LGBT+ initiatives
- Challenge offensive language or "banter" when you hear it
- Don't force someone to come out because you think they may be LGBT+
- Display visible LGBT+ posters and resources
- Don't assume everyone is heterosexual
- Learn about local and national LGBT+ services

Challenging homophobia and transphobia

"That's so gay"

This is usually used in a derogatory way to mean something is bad.

If someone is using it you could challenge them by saying:

"If something's rubbish, say it's rubbish. If you say it's gay then you're implying being gay is a bad thing"

"Did you know they're a tranny?"

Words like "tranny", "he-she" or "ladyboy" are very offensive to trans people.

If someone is using a term like this, you could challenge them by saying:

"That word is actually offensive to trans people. You could really upset someone by using those words"

Pronoun dos and don'ts

DO Use the same pronouns that the person refers to themselves as

DO Use neutral pronouns if you're unsure how someone identifies (e.g. they/them)

DON'T Say someone's pronouns aren't real (e.g. Mx, Ze, Xe)

DON'T Say using "they" as a pronoun isn't grammatically correct



If in doubt it is best to ask the individual how they would like to be addressed



Values

Everyone will have a different set of values, these are formed by the environment around us. Things like how we are brought up, family members and religious beliefs shape these values. It is important that we recognise that we should not push our own personal values on those around us, but accept the differences.

Reporting hate crime

A hate crime can be reported by calling the police on 101 or online at

www.cheshire.police.uk

In an emergency please call 999

