

**Promoting positive practice and supporting transgender staff Policy**

Date	Version
November 2015	2.2

**Purpose**

PHNT has developed this guidance with the express aims of:

- Creating a fair and equal culture in which staff are protected from discrimination on the grounds of their transgender status
- Ensuring the dignity of staff
- Providing a fair and equitable process for all staff and applicants
- Complying with external laws, and NHS guidance and policy

**Who should read this document?**

All staff

**Key messages**

The Trust is committed to ensuring that transgender employees are treated with respect and receive equal treatment and protection from discrimination at work.

Within this guidance the Trust clearly recognises its responsibility with regard to the right to fair and equitable treatment and opportunities, confidentiality and dignity for all transgender staff.

The Trust will ensure that transgender staff are afforded appropriate protection from discrimination in compliance with the Equality Act 2010.

**Accountabilities**

<b>Production</b>	OD Facilitator with responsibility for Equality & Diversity
<b>Review and approval</b>	HR & OD Committee
<b>Ratification</b>	Deputy HR & OD Director
<b>Dissemination</b>	OD Facilitator with responsibility for Equality & Diversity
<b>Compliance</b>	Director of HR & OD

**Links to other policies and procedures****Bullying & Harassment Policy**

**Recruitment & Selection Policy, Criminal Record Bureau Standing Operating Procedure, Grievance Policy, Disciplinary Policy,**

**Information Governance Policy, Whistleblowing Policy,**

**Equality & Diversity Policy**

**Version History**

1	November 2010	Initial document publication
2	November 2015	HR & OD Committee
2.1	June 2020	Extended to May 2021 by Lisa White
2.2	March 2021	Extended to November 2021

Last Approval	Due for Review
November 2015	Extended to November 2021

*PHNT is committed to creating a fully inclusive and accessible service.*

*Making equality and diversity an integral part of the business will enable us to enhance the services we deliver and better meet the needs of patients and staff.*

*We will treat people with dignity and respect, actively promote equality and diversity, and eliminate all forms of discrimination regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/ maternity.*

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## 1 Introduction

Plymouth Hospitals NHS Trust is committed to ensuring that transgender employees are treated with respect and receive equal treatment and protection from discrimination at work. This guidance sits alongside other relevant policies, to set out Plymouth Hospitals Trust's commitment to equality for all staff.

It is vital that the Trust is able to recruit and retain the best staff and skills from across the whole of society. This includes ensuring that transgender people are welcome and respected, and that policies in recruitment, retention and day-to-day employment do not unintentionally operate in ways that discriminate against transgender people.

The Trust will take a zero tolerance approach to any discrimination, victimisation or harassment of transgender staff or perceived discrimination, victimisation or harassment of staff.

## 2 Purpose

PHNT has developed this guidance with the express aims of:

- Creating a fair and equal culture in which staff are protected from discrimination on the grounds of their transgender status
- Ensuring the dignity of staff
- Providing a fair and equitable process for all staff and applicants
- Complying with external laws, and NHS guidance and policy

## 3 Definitions

**Gender:** Gender consists of two related aspects; *gender identity* which is a person's internal perception and experience of their gender; *gender expression* which is the way that the person behaves and lives in society and interacts with others, based on their gender identity, to live in the *gender role* (male or female) recognised in society. *Acquired gender* is used to describe the person's gender role after reassignment

**Gender dysphoria:** *Gender dysphoria* describes the discomfort experienced when a person's sense of being a man or a woman (their gender identity) is inconsistent with the physical appearance of the body. In its persistent form, this is known as transsexualism. This is a medical condition which is understood to be caused by a gestational hormone imbalance.

**Gender reassignment:** Under the Equality Act 2010, a person has the protected characteristic of *gender reassignment* if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. This is a personal process that may involve medical interventions such as counselling, psychotherapy, hormone therapy or surgery, but does not have to. In this guide, *gender reassignment/gender change/change of gender* is used to describe the process of change and *gender transition* to describe the time when gender role is changed.

**Transsexual:** An adjective to describe a person who began life as one biological sex, then implements the personal process of gender reassignment to complete a transition to be identified both legally and socially as the gender to which they were not assigned at birth, but with which they identify themselves. Those that have completed the process may not regard themselves as transsexual people but as men or woman, having resolved the conflict between their gender identity and gender expression. Also used by the Equality Act 2010 to define *transsexual people* as those people who fall within the definition of those people with the protected characteristic of gender reassignment.

**Transgender (often abbreviated to “trans”):** This is often used as an “umbrella term” to include all people who experience gender dysphoria and express this in some way. *Transgender* includes transsexual people but is much wider to embrace a wide variety of gender expression including those who have no intention of permanently changing gender and who do not identify as either men or woman.

### **People who cross-dress (transvestite people)**

These are people who sometimes wear the clothing of the opposite sex, but don't want to live full-time as a member of the opposite sex, people who feel that they are both male and female, or neither male or female.

## **4 Legal and regulatory background**

### **Equality Act 2010**

Under the protected characteristic of 'gender reassignment', the Equality Act 2010 provides protection for transgender people from discrimination and harassment.

The Act does not require a person to be under medical supervision to be protected – so a woman who decides to live permanently as a man but does not consult a doctor or undergo any medical procedures would be protected.

A Transgender person is also protected from indirect discrimination, where an apparently neutral rule, policy or practice particularly disadvantages transsexual people and cannot be justified.

Under the Act, it will continue to be unlawful discrimination to treat transsexual people less favourably for being absent from work for gender reassignment treatment than they would be treated if they were absent because they were ill or injured; or if they were absent for some other reason and it is not reasonable to be treated less well.

### **The Gender Recognition Act (GRA) 2004**

This legislation provides transgender people with legal recognition in their “acquired” gender. Legal recognition follows from the issue of a full Gender Recognition Certificate (GRC) in cases where the Gender Recognition Panel (a body made up of judicially trained lawyers and doctors) is satisfied that the applicant:

- a) has, or has had, gender dysphoria;
- b) has lived in the acquired gender throughout the preceding two years; and
- c) intends to continue to live in the acquired gender until death.

The applicant also needs to be single for a “full”, rather than interim, certificate to be issued.

It should be noted that surgical intervention/gender reassignment surgery is not a requirement for the issue of a GRC.

Legal recognition has the effect that, for example, a male-to-female transgender person is recognised as a woman **for all purposes – in law**. Upon the issue of a full GRC, the person assumes all legal rights of their new gender, including that to marry someone of the opposite gender to their acquired gender, and to retire and receive state pension at the age appropriate to the acquired gender. The effect is just as if they had always been of the acquired gender. A person whose birth was registered in the United Kingdom is entitled to a new birth certificate reflecting the acquired gender. However, **not all transgender people can or do obtain gender recognition**. For example, those people still within the two year qualifying period, so the possession of a GRC should never be used to determine how a transgender person is treated, except in those specific instances where the legal sex of the individual is paramount

## Privacy

The GRA made it a criminal offence in respect of disclosing a successful applicant’s gender history to somebody else. Section 22 of the GRA says that:

*It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.*

“Protected information” means information which relates to a person who has made an application under the GRA. This covers both the fact of the application itself and, if the application was successful, the fact that the individual was previously of the opposite gender to the one in which they are now legally recognised.

A person acquires information in an “official capacity” if they are acting:

- as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or
- in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.

It is not an offence to disclose information obtained in these circumstances if any of the following apply:

- the information does not enable the person to be identified
- that person has agreed in writing to the disclosure of the information
- the person making the disclosure genuinely does not know or believe that a full gender recognition certificate has been issued, although there would need to be very clear evidence given
- the disclosure is in accordance with an order of a court or tribunal

- the disclosure is for the purpose of instituting proceedings before a court or tribunal
- the disclosure is for the purpose of preventing or investigating crime
- the disclosure is made to the Registrar General for England and Wales, the Registrar General for Scotland or the Registrar General for Northern Ireland
- the disclosure is made for the purposes of the social security system or a pension scheme
- the disclosure is in accordance with provisions made through regulations which the Secretary of State is permitted to make under the Act

Employees at all levels, who could learn about an individual's gender reassignment history in the course of their work, need to be very clear about the handling of this information. This could apply to:

- The information that can be entered into HR files where other staff might have access
- Discussion about an applicant's job interview
- The contents of Occupational Health reports
- Information that can be passed from one medical professional to another in the course of referral or when discussing a case
- Information stored in medical records where that data could be accessed by others

***Extreme caution should be taken in all cases of disclosure of information as stated above.***

## Data Protection Act (1998)

Under the terms of the Data Protection Act (1998), organisations such as the NHS must ensure that any personal information it gathers in the course of its work is:

- only used for the stated purpose of gathering the information
- kept secure

Under the Act, transgender status and gender reassignment would constitute 'sensitive data' for the purposes of the legislation. It can be processed only for certain specified reasons set out in the Act.

The DPA applies whether the transgender person has obtained legal recognition or not. This means that it is good practice to treat such details with equal care whether an individual has a gender recognition certificate or not and whether they identify as transgender.

## 5 Duties

The Trust will not tolerate the following:

1. **Direct discrimination** – occurs when treating an individual less favourably than you would treat anyone else in the same circumstances.
2. **Indirect Discrimination** – occurs when a requirement or condition of employment has the effect of discriminating unfairly or unjustifiably between one group or an individual and another. This can happen unintentionally.
3. **Victimisation** – occurs if someone is given less favourable treatment than others, because they have exercised their rights under the policy or relevant legislation (eg. by making a complaint or providing information on discrimination or has supported someone else who has made a complaint of discrimination).
4. **Harassment or Bullying** – undermines people's dignity and effectiveness at work. It may involve action, behaviour, comment or physical contact, which is unwanted, not reciprocated and which causes offence.

For definitions see **Section 3** of this guidance.

Any action or behaviour found to be in breach of this guidance may be regarded as misconduct or gross misconduct in accordance with the Trust's Performance & Conduct policy.

## **6 Responsibilities**

### **6.1 The Trust**

Within this guidance the Trust clearly recognises its responsibility with regard to the right to fair and equitable treatment and opportunities, confidentiality and dignity for all transgender staff.

The Trust will ensure that transgender staff are afforded appropriate protection from discrimination in compliance with the Equality Act 2010.

### **6.2 Chief Executive and Directors**

The Chief Executive and the Trust Board have a legal responsibility to oversee this guidance and to ensure its correct application. The Director of HR & OD is the named Lead for this guidance.

### **6.3 Human Resources and Organisational Development**

The Human Resources and Organisational Development Teams will have a responsibility to provide advice in relation to the application of this guidance and associated processes and relevant employment law and best practice.

### **6.4 Managers**

Every Manager is responsible for ensuring that:

- all staff are aware of and able to easily access this guidance
- a safe environment, free from discrimination is provided for transgender staff
- the privacy, dignity and confidentiality of transgender staff is maintained

### **6.5 Staff**

All staff are responsible for ensuring that:

- they are aware of this guidance
- a safe environment, free from discrimination is provided for transgender staff
- the privacy, dignity and confidentiality of transgender staff is maintained

The overarching principle of this guidance is that transgender staff should be treated with respect, with confidentiality guaranteed, and addressed appropriately at all stages of their employment, supported by the Trust whether or not they undergo gender reassignment.

### 7.1 Privacy and Disclosure

Many transgender people wish to keep their transsexual status private, whilst others are willing to discuss it confidentially or even openly. There is no obligation on a transgender person to disclose their status as a condition of employment. For further information about the privacy and disclosure please refer to **section 4** of this guidance.

### 7.2 Disclosure at interview/on joining the Trust

Interviewees may not necessarily want to disclose their transgender status at interview, and it is not a question that should be asked.

On joining the organisation, some transgender people may not have any identification documents; qualification certificates etc in their acquired gender, and may have to disclose their transsexual identity. Employers must ensure that this information is kept confidential.

### 7.3 References and certificates of qualifications

When an employer is asked for a reference for a transgender person, he or she must provide it, without hinting that the person has had a change of gender. If the employer has to keep evidence of professional status or qualifications, he or she should discuss with the individual concerned how to retain such evidence on file – if, for example, certificates are in the individual's original name – so as not to compromise or breach disclosure of protected information.

### 7.4 Data Protection Act 1998 (DPA)

Under the Data Protection Act 1998, transsexualism and gender reassignment would constitute 'sensitive data' for the purposes of the legislation. It can only be processed for certain specified reasons set out in the Act. For further information about the DPA please refer to **section 4** of this guidance.

### 7.5 Record Keeping

The manager will need to identify the point at which the individual's new gender is formally established in terms of the personnel records, and any consequent alterations (for example, security passes, the individual's choice of name for email, Trust Net entry etc).

The employer should ensure that all documents, public references (such as telephone directories) 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. 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. In some instances, however, it may be necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes prior to transition.

## **7.6 Access to employee records**

The right of the individual to maintain the confidentiality of their previous identity needs to be secured. Access to records showing the change of name and any other details associated with the individual's transsexual status, (such as records of absence for medical treatment) must be restricted to staff who need the information to do their work.

They could include people directly involved in the administration of the process, for example the HR Business Partner/Advisor, Payroll Clerk and Occupational Health and Well-being. They do not include colleagues, clients or line managers, other than the manager at the time of the transition). The transgender member of staff or a representative they have identified will be communicated with and advised who will have access to their records. Breaches of confidentiality should be treated in the same serious manner as disclosure of personal details of any other member of staff as per the disciplinary policy.

Transgender people in employment may choose voluntarily to disclose information at a secondary level, for example, answering a workforce monitoring questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed as further disclosure must not be made without the express permission of the transgender person.

## **7.7 How to address a transgender member of staff**

This will be hugely important to the member of staff - ask them how they would like to be addressed and ensure that colleagues are aware. Remember to take care when addressing letters and envelopes, using the name and title preferred by the member of staff. It is natural that some initial confusion may occur – discuss with the member of staff and colleagues how to handle this. It is possible that the trans member of staff prefers a nickname or transitory name to be used.

## **7.8 Support**

Gender transitioning may be one of the most difficult, traumatic journeys any normal person can undergo and support from colleagues is essential.

The manager and member of transgender staff should meet in confidence to discuss both the emotional and practical considerations of the transition process to ensure that all involved are supported.

A 'mentor' chosen by the transgender member of staff is an additional support, someone to whom the trans member of staff could turn if any difficulties should arise around the time of transition and who could liaise with others if necessary. This may be someone external to the Trust eg Union Representative or someone from the Trans community.

Be aware that no matter how much preparation is made and support given, some people may have genuine concerns, may not understand the situation or are simply

unsympathetic. It should be made clear to both colleagues and service users that any incidents of harassment, bullying, intimidation or victimisation are unacceptable.

Awareness training from the Equality and Diversity Lead is available to discuss any issues or concerns, in a safe environment, for all staff that are in contact with the transgender member of staff.

## **8 Recruitment and Retention**

### **8.1 Pre interview**

Literature seen by applicants before interview should include the Trust equality statement. It should be made clear throughout the recruitment process, and during employment, that the Trust will support transgender members of staff who may or may not be undergoing gender reassignment.

### **8.2 Interview Stage**

There is no requirement whatsoever for job applicants and interviewees to disclose their transgender status unless they wish to. If they choose to disclose, their trans status this cannot be a reason for not offering employment and non-disclosure or subsequent disclosure is not grounds for disciplinary action or dismissal.

A transgender member of staff may be asked to complete a workforce monitoring form and identify that they are transgender; however, they may prefer to complete the form under the heading for the gender they are presenting in or choose not to disclose.

Although it may be the perception that a person is transgender, this may not be the case. They may have an intersex condition, or simply be a feminine man or a masculine woman. However, if one of the limited exceptions to the Sex Discrimination Act applies (see GOQ/GOR below), then an individual would be expected to disclose their transgender status and an interviewer would be able to ask an appropriate question.

### **8.3 Interview and employment stage**

Great care should be taken when addressing letters and envelopes which may be sent to the employee's address. Names and titles should be in accordance with the wishes of the person concerned. A person's gender presentation at home may not always be the same as it is in the workplace; addressing correspondence carelessly could inadvertently 'out' someone.

By law a potential employer must see an applicant's proof of identity and right to work in the UK. This includes sight of a UK/EEC Passport or full birth certificate and a P45, P60, National Insurance Card or a letter from a Government Agency (Asylum and Immigration Act, 1996).

Under the Equality Act 2010 it is a **criminal offence** for anyone who becomes aware, in any capacity that someone has applied for, or been issued with, a Gender Recognition Certificate, to reveal that information, or anything relating to their change of gender status. If a manager is giving a reference for an existing trans staff member, the manager must use the name which is used by that employee and not refer to a former name or gender status.

Unwarranted breaches of confidentiality will be treated in a serious manner and may amount to harassment, resulting in disciplinary action.

#### 8.4 **Genuine Occupational Qualification (GOQ)**

There should be no legitimate reason why a transgender person should not be able to take up any of the jobs advertised by the Trust if they meet the essential criteria.

Under the Equality Act 2010 it is unlawful to discriminate against anyone on the grounds that they are planning to undergo, are undergoing or have undergone gender reassignment.

There are only very limited circumstances where a Genuine Occupational Qualification (GOQ) might lawfully apply – and even these exceptions cease to apply when an applicant has a Gender Recognition Certificate.

Following legal recognition of an individual, the entire body of employment law will be interpreted on the basis that they are regarded, for all purposes, as a full member of their acquired gender. This means that a male to female transsexual person (a transsexual woman) could only be lawfully discriminated against in a situation where it would be lawful to discriminate against any other woman.

In order to lawfully decide that a post is not open to someone who is in the process of transition or has not obtained a Gender Recognition Certificate the exclusion must be shown to be objectively proportionate as a means of achieving a legitimate aim (e.g. accommodating staff in sleeping accommodation whilst maintaining their privacy, dignity and safety). An employer would need to show that there was no other way of accommodating a trans employee alongside others within the available premises to achieve that goal.

Where a member of staff is already employed in a position or environment involving a GOQ prior to a change of social gender, it is important that the Trust discusses the issues and options with that individual, early on, in order to come to a mutually acceptable arrangement.

Discrimination or dismissal on the grounds of a GOQ is not permissible where there are other members of staff available to do the task, and dismissal should be a 'last resort', in any event.

GOQs may be regarded as relevant in circumstances such as the following:

- (i) Where individuals have to share accommodation and it is not reasonable on privacy or decency grounds to do so while in the process of undergoing gender reassignment. In this case the Trust would have to show that it would not be reasonable to provide alternative accommodation for the individual.

- (ii) Where a post requires the holder to provide vulnerable individuals with personal services and the Trust believes those services cannot be effectively provided by someone undergoing gender reassignment. This exception will apply only in very rare circumstances.

It is advisable to assume by default that transgender people are eligible for all jobs and to seek advice from the recruitment team in any rare circumstances where you think otherwise.

If it has been professionally assessed that a GOQ **does** apply to the post, it would be best practice to state that in the job description and person specification, and include the reasons why.

## 8.5 Disclosure Barring Checks

For transgender staff that are required to undergo a Disclosure Barring Service (DBS) check it need not be a problem because there is a special process which they can follow in order to sidestep the problems they would otherwise face in complying with the requirement to make truthful statements.

The Trust should take steps to make transgender applicants aware of this service, further information can be found on the Gov.uk website.

Applicants may contact the DBS sensitive applications team if they are a transgender applicant and they don't want to reveal details of their previous identity to a potential employer.

**Contact details:** DBS sensitive applications team - [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk)

Sensitive applications team

Customer services

PO Box 165

Liverpool

L69 3JD

All correspondence is processed in the strictest confidence.

Briefly, the process operates as follows:

- Transgender applicants for a DBS disclosure should first contact the sensitive applications teams as above; to clarify anything they are not sure about and ensure that the DBS know they will be using the special provisions.
- They should then complete the form presented by the Trust Recruitment Team in the normal way, except that they need not complete details (or supply forms of evidence) that would expose their gender history to their employer.
- If they wish to leave out details that could 'out' them then they should photocopy the form, ensuring they have a clear record of the application serial number.
- The applicant should then immediately contact the DBS as above and notify them of the application number. **Note that only the above contact details should be used, not the main DBS call centre number.**
- The Sensitive Applications Team of the DBS in Liverpool then have the means to intercept the application submitted by the Trust. They will ask the applicant to supply the information needed to replace that which was omitted. This is then matched up so that a rigorous Disclosure Barring check can be carried out in the same way as for any other applicant.

How the process works

- Disclosures sent to the employee and the Trust will not reveal the applicant's former identity **unless** they have an offence or caution that has been recorded in that name in police records. In this case there is no way of avoiding the disclosure of that former identity to the employer.

The Trust have an Internal DBS Panel which will investigate any matter revealed in a disclosure with the person seeking the position, before withdrawing a conditional offer of employment, or proceeding with any action against an existing employee.

Further information regarding DBS and Disclosure processes can be found in the Trust DBS Standing Operating Procedure on Trust Documents.

## 9 Pensions

It is recommended that staff contact the relevant agencies for current advice:

### Contact details:

NHS Pensions via [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions)

DWP via [www.dwp.gov.uk](http://www.dwp.gov.uk)

Local Pension Office via <https://www.gov.uk/find-pension-centre>

### NHS Pensions

In the NHS Pension Scheme there are a small number of gender specific regulations where it could be more financially beneficial to be recognised in an alternative gender. Where a member of the NHS Pension Scheme requests their pension records be amended to recognise their new gender they need to write to NHS

Pensions enclosing either the original or a certified copy of the full GRC and where appropriate their new birth certificate. Without sight of a full GRC gender cannot be altered.

To obtain the most recent requirements please contact the NHS Pension Agency either in writing at:

NHS Pensions  
Hesketh House  
200-220 Broadway  
Fleetwood  
Lancashire  
FY7 8LG

Or by telephone on 0300 3301 346

#### Implications for Scheme members

Legal recognition of the new gender will take effect from the day a full GRC is granted ensuring that any future benefits are to be paid in accordance with the gender at the time of payment. Historic pension events cannot be changed. As the NHS Pension Scheme regulations are in the main equalised there will be minimal implications for the member, the exceptions being:

- Members of the Special Classes (1995 section only)
- Members who have scheme membership before 25 March 1972 (1995 section only)
- Members who transfer in or out of the NHS Pension Scheme (1995 section and 2008 section)

For further information on the NHS Pension Scheme regulations concerning Transgender members see the Gender Recognition Factsheet at:

[http://www.nhsbsa.nhs.uk/Documents/Pensions/Gender\\_recognition\\_factsheet\\_\(V3.0\)\\_06.2013.pdf](http://www.nhsbsa.nhs.uk/Documents/Pensions/Gender_recognition_factsheet_(V3.0)_06.2013.pdf)

#### **State Pension**

To obtain the most recent information on state pension for transgender people please contact the DWP Gender Recognition team: Their contact details are:

Phone number 0191 2187622

Fax number 0191 6138913

E- mail [npc.grteam@dwp.gsi.gov.uk](mailto:npc.grteam@dwp.gsi.gov.uk)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/372462/gender-recognition-pensions-and-benefits.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372462/gender-recognition-pensions-and-benefits.pdf)

Following diagnosis of Gender Dysphoria, which may take a matter of months or a period of years, many transgender people choose to receive gender reassignment treatment, which usually involves hormone therapy and surgery, to help them appear more masculine or feminine.

Preliminary diagnosis is usually followed by psychological counselling, which may then be followed by hormone therapy. Typically after about six months the trans person's physical appearance begins to change. It is at this point that the effects of hormone therapy are often irreversible. Transgender people will often change their social gender around this stage, although not necessarily their gender role at work. Some clinics insist that their service users begin the real life test prior to hormone therapy.

At some point the transgender person will want to start to live full time in their 'new' acquired gender and their name and other records (such as their driving licence and passport) may be formally changed. If there are no delays (for example funding problems or waiting lists), the transgender person usually proceeds to one or more reassignment surgeries after one to two years of hormone therapy.

It should be noted that every individual case may be different and it is not to be assumed that every transgender person will permanently reassign or transition, some transgender people never undergo gender reassignment surgery.

### **Support for the member of staff, line manager and colleagues:**

Transgender members of staff should be reassured that the Trust will be as supportive as possible. Trust contacts able to provide support include:

- Line Manager
- Equality and Diversity Lead, ext 37251
- Trust Chaplains, Chapel, Level 7, Derriford, ext 52313
- Occupational Health & Well-being, Kingstor House, Derriford ext 37222

Providing a 'mentor' (unless the line manager takes on this role), if the member of staff wishes to have one, is an additional support. This person may be chosen by the transgender member of staff and could be a union representative or someone external to the organisation. The mentor would be someone to whom the trans member of staff could turn if any difficulties should arise around the time of transition and who could liaise with others if necessary

See **Appendix 1** for external support agencies

### **Who to contact as a transgender member of staff**

Members of staff wishing to discuss their transition should initially contact their line manager if happy to do so and the Trust Equality & Diversity Lead. It is recommended that the HR Department are involved from the outset in order to ensure appropriate support for all involved and so that legal obligations are met.

### **First steps**

Managers (and any other person acting act as a point of contact identified by the transgender member of staff) should be made aware of this guidance, in order to

support the member of staff fully. Confirmation should be given to the member of staff that all discussions will be confidential.

Agreement should be reached as to who will be the main point of contact to manage the transition from the Trust's perspective (eg line manager, HR Equality & Diversity Officer, colleague etc), full contact details of this person should be given to the transgender member of staff. A meeting should then be arranged with the member of staff, the nominated person, the line manager and the Equality & Diversity Lead (if not the nominated person) to have a more detailed discussion and to agree the process for handling the transition.

The Human Resources team are available to act as advisors on this guidance and to provide guidance and advice to transgender member staff and managers at all stages of the process. It may also be useful to involve Staff Health and Well-being at this stage, but only with agreement from the transgender member of staff.

### **First Meeting**

It is a good idea for the member of staff, the point of contact, the line manager and the Equality & Diversity Lead to discuss a plan for managing the transition at work. The contents of this meeting must be kept strictly confidential.

Discussions may include:

- whether the member of staff wishes to stay in their current post during or after gender reassignment or, if preferred and possible, to be redeployed
- the expected timescale of medical and surgical procedures (if any) and the time off required for medical treatment, if known, including what effect this will have on the employee's pay
- the expected point or phase of change of name, personal details and social gender if they are in a position to do so
- whether the member of staff wishes to inform colleagues, associates and clients themselves, or would prefer this to be done by someone else who is agreed to be suitable
- whether the transgender member of staff feels that training or briefing of colleagues will be necessary and at what point and by whom this will be carried out. Support from the Equality and Diversity Lead should be provided
- the amendments that will need to be made to records and systems
- agreeing a procedure for adhering to any dress code or uniform requirements
- agreeing the point at which the member of staff will commence using single sex facilities in their new gender (such as toilets and changing areas)
- liaison with any clients or external agencies in respect of any outstanding matters in which the transgender individual is currently involved

- Agreeing how any media coverage will be handled if the transgender member of staff deems appropriate. If there is any hint of media interest then the protection and confidentiality of the transgender member of staff is paramount. If any member of staff comments to the media without the written permission of the transgender person or the Communications Officer this will be treated as a disciplinary matter.
- After the member of staff has successfully transitioned into their new gender role, or obtained a gender recognition certificate, it is not appropriate to keep any records regarding transition plans and they should be destroyed.

## **Informing Colleagues**

It is good practice for the point of contact to take responsibility for informing whoever needs to know, unless the trans member of staff would prefer to do this. If so, the point of contact will just need to know when the disclosure is to take place and in what detail, so that they can agree and provide appropriate support.

It's also good practice for the point of contact to make themselves known to the transgender person's colleagues as there may be incidences of third party reporting or the transgender person's colleagues may have specific issues they wish to discuss.

The Trust should not inform colleagues, clients or the public that a member of staff has in the past undergone gender reassignment, is intending to undergo, or is undergoing, gender reassignment, without the individual's explicit consent - gender reassignment will have no bearing on that person's ability to do their job. If a trans member of staff is in possession of a gender recognition certificate it is unlawful to disclose their transgendered status without their consent.

Discussion with colleagues, clients and the public should take place in two ways:

1. general information about transgender issues
2. specific information to enable people to understand the needs of the member of staff involved.

At the point of change of gender, it is common for transgender members of staff to take a short time off work and return in their new name and gender role. This is often used as an opportunity to brief others.

If someone has 'transitioned' prior to joining the Trust or a new department, it is not appropriate for previous colleagues to mention their transgender history. This could constitute a criminal offence.

## **What can colleagues do to make the transition easier?**

All members of staff should refer to their transgender colleague by their new name and use pronouns appropriate to their new gender role.

In the early days it is only natural that people may occasionally get mixed up. The transgender member of staff should be aware that this could happen and be prepared to make allowances. It is advisable to discuss this in advance with the

transgender member of staff and agree informally how they would prefer this to be managed.

Should staff have genuine concerns, they should make the Equality and Diversity Lead aware as soon as possible and any issues should be resolved quickly. Unfortunately, no matter how much preparation is made and support given, there may still be people who do not understand the situation or are unsympathetic. Any incidents of misconduct, harassment, bullying or victimisation will be dealt with quickly and in accordance with the Trust's Disciplinary and/or Grievance Procedure.

### **Changing Spaces and Toilets**

If a permanent transition is taking place the use of toilets and other gendered facilities can be an issue in the workplace, particularly during the early stages if colleagues were familiar with the member of staff in their former role.

Clinicians involved in supervising a member of staff's gender reassignment expect to see successful routine use of the appropriately gendered facilities as a mark of the member of staff's social acceptance.

The usual point for starting to use opposite gender facilities will be the day the member of staff starts coming to work in that role.

- As a temporary compromise measure, it may be appropriate to reserve one set of facilities for colleagues who may have strong objections to sharing facilities used by the transgender member of staff.
- Where locker or shower facilities are open plan then it is good practice to review this and, at the least, provide some provision (e.g. curtained spaces) where staff need not be in a state of undress in the presence of others.
- If it is genuinely impossible to adapt locker or shower facilities in order to accommodate a pre-operative member of staff in a state of undress then this is one very limited example of an instance where the law permits an employer to make separate arrangements. It is highly unlikely that the member of staff concerned would object to this preoperatively.
- However, it is not appropriate to request a transgender member of staff to use disabled toilet facilities in the long term unless they have a disability requiring this or unless this is their preference.
- Special arrangements must be time limited.
- It is never acceptable to require someone undergoing gender reassignment to use toilets or other facilities designated for members of their birth gender. Following gender reassignment surgery or legal recognition, trans members of staff must be supported to use all facilities designated for their acquired gender.

It is also important to appreciate that if anyone is likely to feel vulnerable in the toilet then it will most likely be the transgender member of staff – being acutely aware of the incongruity in their anatomy and certainly not wishing to draw any attention to this. The member of staff is aiming to move away from their former gender role; they are therefore not going to behave in any way that reminds them or anyone else of that background.

## Time Off for Medical Treatment

As part of the transition plan, the manager / Equality and Diversity Lead /HR Representative/ point of contact and the member of staff should discuss how much time, if any, will be needed to undergo gender reassignment treatment. When the member of staff is absent for treatment or surgery then normal sick pay arrangements will apply.

Legislation does not specify a minimum or maximum time that employers should allow for treatment.

Transgender members of staff should follow normal Trust policy for medical appointments. As far as possible, managers should offer flexibility to transgender members of staff who may need to take holiday or rearrange working hours in order to attend additional appointments (for instance, for electrolysis).

Transgender members of staff must not be treated any less favourably than any member of staff absent due to illness or for some other reason where it would be reasonable to allow a similar amount of time off work.

The recovery time from surgery will depend on the procedure, the individual and any complications that may arise. Major surgery like genital reassignment can require several weeks. Male to female genital surgery is usually accomplished in a single step. Female to male surgery is often more complex and can involve 4 to 5 separate surgeries, each requiring a period of recovery before returning to work. Time off will depend on the role the transgender member of staff is assigned to.

Any **reasonable** absence because of the effects of treatment for gender reassignment should not normally be taken into account for the purposes of formal action for unsatisfactory attendance. Careful account should be taken of the requirements imposed by the clinicians treating the individual, the distances travelled to appointments, plus the differences that can occur between different people recovering from surgery.

A discussion should take place with the transgender member of staff about the involvement of Staff Health & Well-being following surgery and the return to work. Reasonable adjustments should be discussed and put in place as required if practicably possible.

## Public Facing Roles

A member of staff's gender transition may be unavoidably visible to the public, especially in the early stages of gender transition. Although many people cease being visibly different as transition progresses, there are others for whom it will continue to be a reality.

- Instances of gender reassignment can attract the attention of the local and national press. The Trust Press and Communications Office will work with the transgender member of staff to prepare a statement to be issued as and when necessary. All other staff must maintain strict confidentiality and not provide any information directly or indirectly to the press. If a transgender member of staff is being harassed by the media, the Trust will do its best to protect them, and consider strategies which minimise personal exposure and the need for

the member of staff to defend their decision. In extreme cases, transgender members of staff and the Trust can complain to the Press Complaints Commission. If any member of staff comments to the media without the written permission of the transgender person or the Communications Officer this will be treated as a disciplinary matter.

Some staff may elect to move to another role during transition, however, they cannot be forced to do so. Similarly, the way someone looks and the negative reactions this might be expected to elicit from certain members of the public must not be a barrier to recruitment for a public-facing role. In these circumstances it is important that managers support the member of staff in a positive manner and listen to how they feel about things and how they feel they are coping. Colleagues may also benefit from advice on how to contribute too.

### **After Transition**

When people complete their transition, they may no longer regard themselves as part of the transgender umbrella. They may consider having been transsexual to just be an aspect of their medical history which has now been resolved and is no longer an issue in their life. In such cases, they simply describe themselves as man or woman and it is most disrespectful to insist on calling them transgender or transsexual against their wishes.

## **11 Overall Responsibility for the document**

The Assistant Director for Learning and Organisational Development and EDS Steering Group has overall responsibility for the co-ordination and dissemination, implementation and review of this guidance.

## **12 Consultation and ratification**

Consultation on this guidance has been undertaken with the following groups:

### **Workforce Side Consultation Group**

Policy Sub Group

### **Committees**

#### **EDS Steering Group**

#### **Management Consultation Group**

Associate Director of Workforce & Organisational Development

Organisational Development Facilitators

HR Business Partners

Recruitment Team

Occupational Health & Wellbeing Dept

Information Governance Team

Transgender representative

## **External Agencies**

Plymouth PRIDE Forum

Transgender Information

## **13 Dissemination and Implementation**

Following approval and ratification this document will be rolled out across the Trust.

Publication of this document will be publicised in Vital Signs the Trust's weekly workforce news briefing. All Departmental Heads will have the document sent to them and the new document is available in the Trust Documents Network Share Folder.

Local representative groups will be requested to "host" the guidance within their organisation so they are aware of the commitments that the Trust are making within the document should they be approached for support from a member of workforce or service user.

## **14 Monitoring compliance and effectiveness**

The Trust will undertake a regular audit of the processes specified in this guidance.

It should be noted that the responsibilities in this guidance are enforceable and that managers (and members of the workforce where applicable) failing to uphold their responsibilities may find themselves in breach of internal disciplinary policies and legislation.

## **15 References and associated documentation**

This guidance has been written in accordance with the Equality Act 2010 and the Data Protection Act 1998.

Reference to other Trust policies has been made under the *Links to other policies* section of this policy.

Age Concern UK – *Transgender issues in later life*

CIPD 2012 - *Sex discrimination, sexual orientation, gender reassignment and employment*

Gender Identity Research and Education Society (GIRES) - *Legal protection and good practice for gender variant, transsexual and transgender people in the workplace - Guidelines for employers*

**Internet sources –**

Depend <http://www.depend.org.uk/>

Equality and Human Rights Commission [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

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

Gendys Network <http://www.gender.org.uk/gendys/>

Government Equalities Office <https://www.gov.uk/government/policies/equality>

Mermaids <http://www.mermaidsuk.org.uk/>

NHS Choices <http://www.nhs.uk/livewell/transhealth/pages/transhealthhome.aspx>

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

Pride in Plymouth <http://www.prideinplymouth.org.uk/>

The Beaumont Society <http://www.beaumontsociety.org.uk/>

The Gender Trust <http://www.gendertrust.org.uk/>

The Looking Glass Society <http://www.looking-glass.greenend.org.uk/>

The Transgender Zone <http://www.transgenderzone.com/>

**Support Groups –****Plymouth Pride Forum**

Plymouth Pride Forum, c/o PDREC 2nd Floor, Prideaux Court, Palace St, Plymouth  
PL1 2AY

Telephone: 07833010712

[email: info@plymouthprideforum.org.uk](mailto:info@plymouthprideforum.org.uk)

<http://www.plymouthprideforum.org.uk/>

**Qwest FtM UK** - a Charity that furthers the interests of and provides support for FtM identified people and their families in the UK

07811 814302

[info@qwestftmuk.org](mailto:info@qwestftmuk.org)

[www.westernboys.org](http://www.westernboys.org)

**Intercom Trust** - The helpline number is answered by trained staff and volunteers, all of whom are LGBT. They are friendly, good listeners, and well-informed about the issues.

Helpline: 0800 612 3010

[Office@intercomtrust.org.uk](mailto:Office@intercomtrust.org.uk)

<http://www.intercomtrust.org.uk/>

## **Transgender Zone**

<http://marketplace.transgenderzone.com>

**The Beaumont Trust** - a charitable educational resource for medical, voluntary and lay people who require to increase their knowledge on the subjects of Transsexualism and Transvestism and offers support to those affected by the issues they raise.

Helpline 07000 - 287878

[beaumonttrust@gmail.com](mailto:beaumonttrust@gmail.com)

<http://www.gender.org.uk/bt/>

**The Gender Trust** - a listening ear, a caring support and an information centre for anyone with any question or problem concerning their gender identity, or whose loved one is struggling with gender identity issues.

[info@gendertrust.org.uk](mailto:info@gendertrust.org.uk)

<http://gendertrust.org.uk/>

T: 01527 894 838

Core Information				
Document Title	Promoting positive practice and supporting transgender staff - Guidance			
Date Finalised				
Dissemination Lead	Organisational Development Facilitator/Equality Lead			
Previous Documents				
Previous document in use?	No			
Action to retrieve old copies.	No Applicable			
Dissemination Plan				
Recipient(s)	When	How	Responsibility	Progress update
All Trust Staff		Vital Signs	Information Governance	
EDS Steering Group		Meetings		
All Department Heads		Electronic	Equality Lead	

<b>Review</b>		
<b>Title</b>	Is the title clear and unambiguous?	Yes
	Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?	Yes
	Does the style & format comply?	Yes
<b>Rationale</b>	Are reasons for development of the document stated?	Yes
<b>Development Process</b>	Is the method described in brief?	Yes
	Are people involved in the development identified?	Yes
	Has a reasonable attempt has been made to ensure relevant expertise has been used?	Yes
	Is there evidence of consultation with stakeholders and users?	Yes
<b>Content</b>	Is the objective of the document clear?	Yes
	Is the target population clear and unambiguous?	Yes
	Are the intended outcomes described?	Yes
	Are the statements clear and unambiguous?	Yes
<b>Evidence Base</b>	Is the type of evidence to support the document identified explicitly?	Yes
	Are key references cited and in full?	Yes
	Are supporting documents referenced?	Yes
<b>Approval</b>	Does the document identify which committee/group will review it?	Yes
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	
	Does the document identify which Executive Director will ratify it?	Yes
<b>Dissemination &amp; Implementation</b>	Is there an outline/plan to identify how this will be done?	Yes
	Does the plan include the necessary training/support to ensure compliance?	Yes
<b>Document Control</b>	Does the document identify where it will be held?	Yes
	Have archiving arrangements for superseded documents been addressed?	Yes
<b>Monitoring Compliance &amp; Effectiveness</b>	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Yes
	Is there a plan to review or audit compliance with the document?	Yes
<b>Review Date</b>	Is the review date identified?	Yes
	Is the frequency of review identified? If so is it acceptable?	Yes
<b>Overall Responsibility</b>	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Yes

<b>Core Information</b>	
<b>Manager</b>	Jayne Middleman
<b>Directorate</b>	HR & Organisational Development Directorate
<b>Date</b>	
<b>Title</b>	OD Facilitator/Equality Lead (workforce)
<b>What are the aims, objectives &amp; projected outcomes?</b>	<p>The Trust is committed to ensuring that transgender employees are treated with respect and receive equal treatment and protection from discrimination at work. This guidance sits alongside other relevant policies, to set out Plymouth Hospitals Trust’s commitment to equality for all staff.</p> <p>It is vital that the Trust is able to recruit and retain the best staff and skills from across the whole of society. This includes ensuring that transgender people are welcome and respected, and that policies in recruitment, retention and day-to-day employment do not unintentionally operate in ways that discriminate against transgender people.</p> <p>The Trust will take a zero tolerance approach to any discrimination, victimisation or harassment of transgender staff or perceived discrimination, victimisation or harassment of staff.</p>
<b>Scope of the assessment</b>	
<p>This guidance has been developed in accordance with the Equality Act 2010</p> <p>Beneficiaries/stakeholders of this guidance include all workforce</p> <p>The guidance and EIA has been developed by:</p> <ul style="list-style-type: none"> <li>• Equality &amp; Diversity Lead (Workforce)</li> <li>• Equality &amp; Diversity Lead (Service)</li> <li>• Trans representatives</li> </ul> <p>Monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances will be undertaken to ensure compliance with legislative requirements.</p>	
<b>Collecting data</b>	
<b>Race</b>	There is no evidence to suggest that there is a negative impact on race regarding this guidance.
<b>Religion</b>	There is no evidence to suggest that there is a negative impact on Religion or belief and non-belief regarding this guidance.

<b>Disability</b>	<p>There is no evidence to suggest that there is a negative impact on disability regarding this guidance.</p> <p>However, monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances is undertaken to ensure compliance with legislative requirements.</p>
<b>Sex</b>	<p>Staff who have chosen to go through transition to change their sex will be supported throughout the process and reasonable adjustments in the workplace will be made where appropriate and in consultation with the member of staff.</p> <p>Monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances is undertaken to ensure compliance with legislative requirements.</p>
<b>Gender Identity</b>	<p>Staff who have chosen to go through transition to change their sex will be supported throughout the process and reasonable adjustments in the workplace will be made where appropriate and in consultation with the member of staff.</p> <p>Monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances is undertaken to ensure compliance with legislative requirements.</p>
<b>Sexual Orientation</b>	<p>Staff who have chosen to go through transition to change their sex will be supported throughout the process and reasonable adjustments in the workplace will be made where appropriate and in consultation with the member of staff.</p> <p>Monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances is undertaken to ensure compliance with legislative requirements.</p>
<b>Age</b>	<p>There is no evidence to suggest that there is a negative impact on age regarding this guidance.</p> <p>Monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances is undertaken to ensure compliance with legislative requirements.</p>
<b>Socio-Economic</b>	<p>There is no evidence to suggest that there is a negative impact on socio-economic regarding this guidance.</p>
<b>Human Rights</b>	<p>Monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances is undertaken to ensure compliance with legislative requirements.</p>
<b>What are the overall trends/patterns in the above data?</b>	<p>There are currently no trends or patterns in the data that is produced.</p>
<b>Specific issues and data gaps that may need to be addressed through consultation or further research</b>	<p>Collection of gender identity needs to be collected through the workforce monitoring process, however, national systems eg NHS Jobs, Employee Staff Record (ESR) do not have the facility to undertake this at present.</p>

<b>Involving and consulting stakeholders</b>	
<b>Internal involvement and consultation</b>	<p>Internal consultation and involvement was undertaken via email and various forums</p> <p>Workforce Side Consultation Group</p> <p>Policy Sub Group</p> <p>Committees</p> <p>EDS Steering Group</p> <p>Management Consultation Group</p> <p>Associate Director of Workforce &amp; Organisational Development</p> <p>Organisational Development Facilitators</p> <p>HR Business Partners</p> <p>Recruitment Team</p> <p>Occupational Health &amp; Wellbeing Dept</p> <p>Information Governance Team</p> <p>Transgender representative</p>
<b>External involvement and consultation</b>	<p><b>Plymouth PRIDE Forum – Via Email</b></p> <p><b>Transgender Information – Via Email</b></p>
<b>Impact Assessment</b>	
<b>Overall assessment and analysis of the evidence</b>	<p>Staff who have chosen to go through transition to change their sex will be supported throughout the process and reasonable adjustments in the workplace will be made where appropriate and in consultation with the member of staff.</p> <p>Monitoring and analysis of complaints from staff, bully &amp; harassment issues and grievances is undertaken to ensure compliance with legislative requirements.</p>

