

Hull Teaching Primary Care Trust

**TRANSGENDER GUIDANCE FOR
MANAGERS**

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1. INTRODUCTION

The gender equality duty is limited by existing UK law which protects transgender people from discrimination in work and vocational training (including higher and further education) but not in regards to goods, facilities and services. A 1999 European Court of Justice case ruled that it was unlawful to discriminate in employment. The law protecting transgender people against discrimination in the provision of goods, facilities and services was not changed but a recent European Directive means that discrimination will be prohibited in these areas from December 2007.

Hull tPCT is committed to equality of opportunity, both in the provision of services and in its role as an employer. All employees have the right to be treated with fairness, dignity and respect. The working environment must be fair and supportive to individual needs. The PCT expects that individuals who are undergoing or have undergone gender reassignment will receive the same respect and fairness in treatment as any other person.

2. AIMS AND OBJECTIVES

This guidance aims to support The Hull tPCT's Gender Equality scheme by:

- ensuring that transgender people and individuals undergoing the gender reassignment process are treated with fairness and support in their recruitment and career development
- providing management guidance on the status of transgender people undergoing the gender reassignment
- detailing the appropriate procedure to be followed when a transgender person applies for employment following gender reassignment, or states that they are about to undergo the gender reassignment process whilst in the employment of the PCT
- explaining what support should be provided to people undergoing gender reassignment

3. SCOPE

Everyone who works in Hull tPCT, or applies to work in our trust will be treated fairly and valued equally. All conditions of service and job requirements should fit with the needs of the service and those who work in it. This is regardless of for example, age, race, colour, religion, disability, nationality, ethnic origin, gender, sexual orientation or marital status, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership. All employees will be treated in a fair and equitable manner and reasonable adjustments will be made where appropriate (e.g. interpreter or signing provision, access arrangements, induction loop, etc).

The PCT will comply with current and future legislation, however, the principle of equality of opportunity should be extended beyond unlawful discrimination. Everyone employed by the PCT should seek to treat colleagues and service users fairly and equitably. HULL tPCT will work to maintain a fair, safe and inclusive work environment.

The Hull tPCT recognises that understanding and valuing diversity is critical to ensuring success, achieving organisational objectives and improving public trust and confidence. To this end, the PCT is committed to recruiting, retaining and developing employees from as wide a range of backgrounds as possible.

HULL tPCT seeks to attract, recruit and retain people of the highest calibre by applying the principles of fairness, consistency and equality in employment practices and systems. HULL tPCT will treat transgender employees with respect and will enable them to perform their jobs free from harassment, victimisation and unfair discrimination.

This guidance clearly sets out how the PCT will meet its duty and requirements in gender equality and legislation.

4. BACKGROUND

A transgender person is someone who has changed their gender or has indicated their desire to do so. Being transgender means to identify with the gender of the opposite physical sex. This is not to be confused with transvestism, where a person wears clothing appropriate to the opposite gender.

Transgender is not a 'lifestyle choice', nor a facet of sexual orientation, nor a disease. It is in fact a form of gender dysphoria, and must be treated as such. Gender dysphoria is a drive to live in the opposite gender to that in which the person has been registered at birth. It is a widely recognised condition.

4.1 Achievement of Gender Transition

Gender transition is achieved by the person undergoing gender reassignment. This term is used to describe the medical process whereby a person changes their gender. The process consists of counselling, followed by medication to alter the body and physical characteristics.

Typically, after about six months, the physical appearance of the individual will begin to change. If an individual had not yet changed social gender (started a period of 'living' in the desired gender role), they will begin to do so at this stage. Although the former gender may be maintained at work for a further period.

During the early part of the medical process, it is possible that the individual may display characteristics of a gender. The final stage for some individuals is to undergo surgery, which as long as there are no extraneous delays (for example funding problems or waiting lists), will usually be undertaken within one or two years of the commencement of hormone therapy.

Not all persons going through gender reassignment undergo surgery. The decision should be considered as one of personal choice and not as criterion in the process of definition of gender change.

5. LEGISLATION

The main legislation is the Gender Recognition Act (GRA) 2004, and the Sex Discrimination Act (SDA) 1975.

The GRA gives legal recognition in their acquired gender to transgender people who satisfy the Gender Recognition Panel that they:

- have or have had gender dysphoria, and
- have lived in the acquired gender for two years prior to the application, and
- intend to live permanently in the acquired gender

The gender recognition process ensures that transgender people are afforded all the rights and responsibilities appropriate to an employee.

If a transgender person is successful in applying for gender recognition and they are unmarried, they will get a full Gender Recognition Certificate (GRC). If their birth was registered in the UK, they will automatically be entered on the Gender Recognition Register held by the Registrar General. As with other changes in name, marital status etc, their original birth register entry will be marked, confidentially, to indicate that they have become recognised in their acquired gender.

6. RECRUITMENT AND EMPLOYMENT

In most cases the gender of an employee is of no relevance to their ability to do their job. As such, HULL tPCT is committed to ensuring potential employees are not discriminated against in the recruitment process.

6.1 The Interview

Interviewees may not necessarily want to disclose their transgender status at interview, and it is not a question that should be asked, however, if there are certain exceptions when it will be necessary to inform the questioner of their transgender status. These are:

- If there is a genuine occupational requirement for a job to be carried out by a particular sex
- If the job involves conducting personal searches pursuant to statutory powers
- If the job involves working in a private home where there would be close physical or social contact, or knowledge of the intimate details of a person's life, and the employer can show that people would object.

These exceptions will not apply where the individual has obtained a Gender Recognition Certificate.

6.2 References and Certificates

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.

6.3 Keeping Records

The PCT should ensure that all documents, public references, such as telephone directories, intranet contacts etc, and employment details reflect the acquired gender of the person. This will prevent any breach of confidentiality.

Where documents have been sent and copies taken at the point of starting employment (such as birth certificate, exam certificates etc), then every effort should be made to replace those with equivalent documents in the new name and gender.

In some instances, however, it may be necessary to retain records relating to an individual's identity at birth, for example, pension or insurance purposes prior to obtaining gender recognition. However, once a person has obtained a Gender Recognition Certificate, these **MUST** be replaced with new details.

6.4 Access to the Records

Access to records showing the change of name and any other details associated with the individual's transgender status, (such as records of absence for medical treatment) must be restricted to employees who need the information to do their work and confidentiality maintained.

They could include people directly involved in the administration of a process, for example, people involved in the pension schemes. They do not include colleagues, clients or line managers.

Once a person has obtained a Gender Recognition Certificate, there must be no disclosure of this information. Not least because it may be a criminal act subject to a maximum £5000 fine. Breaches of confidentiality should be treated in the same serious manner as disclosure of personal details of any other employee.

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

6.5 Disclosure

The GRA defines a person's application for gender recognition and a person's gender history as 'protected information'.

This means that if an employer or employee acquires the information in the course of official duties, it is a criminal offence to disclose it. It is not an offence, however, to disclose 'protected information' if the person cannot be identified or if the individual gives consent. However it should be recognised that to even publicly acknowledge that there is a transgender employee could result in identifying them.

Any records held on a transgender employee in their birth sex and those held on the same person in their acquired gender should be kept confidential, with specified employees having access to them. The Data Protection Act limits the purposes for which information may be kept, and when that information is no longer useful it must be destroyed.

6.6 Harassment and Bullying

All employees are entitled to receive equal support and protection from the PCT to ensure that they are not victims of bullying and harassment. Any issues or occurrences of this nature will be dealt with through the PCT's bullying and harassment procedure

7. ISSUES RELATING TO TRANSGENDER PEOPLE GOING THROUGH THE ASSIGNMENT PROCESS DURING EMPLOYMENT

7.1 Time Required

Transgender people undergoing medical and surgical procedures related to gender reassignment may require time off from work. The first stage of reassignment, under the supervision of a qualified medical practitioner, may take several months or years. Appointments may be required during normal working time. Following this stage there is typically a period of one or more years before the individual is accepted for reconstructive surgery and the time taken for this will vary greatly from two to around 12 weeks, depending on the nature of the surgery undertaken and any complications, There is no specific minimum or maximum time employers should grant to a person undergoing medical and/or surgical treatment related to gender reassignment. The PCT should show the same flexibility as for someone undergoing any other serious operation.

7.2 Long Term Sickness

Complications may arise as a result of medical treatment for gender reassignment resulting in prolonged incapacity for work. As with any other long-term illness, the individual will be supported by Occupational Health and Human Resources. If incapacity continues beyond normal expectations for the process undergone, a transgender employee may be retired on medical grounds, moved to a different role or the decision may be made to dismiss in the same way as any other person who becomes unfit for employment.

7.3 Agreeing a Process

In order to support and manage successfully a person's transition from one sex to the other, it is essential that the individual be asked to give their views on how the process should be handled.

Considered, sensitive and well-documented, discussions should identify and resolve potential areas of conflict before they arise. Nothing should be done without the consent/knowledge of the individual and discussions with the individual should take place prior to any actions taken. Managers should not make assumptions and decisions based on their perception of what is best for the individual.

A formal statement should be agreed that will set out the rights and responsibilities of the PCT and the person undergoing reassignment and will include a clear route to advice and support from HR, Occupational Health, Unions and any other agreed source.

7.4 Change in Social Gender

At some point the individual will start to live full time as a member of the new sex and name and other records will need to be changed formally. As part of this process the individual will decide the appropriate point when a form of dress and the use of single sex facilities will be adopted that accord with the new social gender. It should be understood however, that this change in social gender, whilst usually taking place during or after hormone therapy, will sometimes occur years before the final surgical procedure. For some individuals, this will never take place. These issues must be discussed fully with the individual.

7.5 Use of Single Sex Facilities

Part of the discussion process with the individual undergoing gender reassignment will be to agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to the other. An appropriate stage for using the facilities of the employee's new sex is likely to be the change of social gender. Following discussions with the individual, a transgender person should then be granted access to the relevant facilities. It is not acceptable, in the long term, to expect a transgender employee to use separate facilities, such as a disabled person's toilet. However, this may be a practical and acceptable short-term option whilst the individual is going through the earlier stages of reassignment.

7.6 Informing Colleagues and the Public

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. If so, the employer 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. Employers 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 agreement.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender reassignment. This should be a private matter since gender reassignment will have no bearing on that person's ability to do their job. Employers should bear in mind that if such an employee is in possession of a Gender Recognition Certificate, it is unlawful to disclose their transgender status without their consent.

If someone has 'transitioned' prior to joining an employer, the employer should not mention their transgender history. Indeed, this could constitute a criminal offence in the case of someone who has obtained a Gender Recognition Certificate.

Education should take place on two levels. General information about transgender issues and specific information to enable people to understand the needs of the person involved.

At the point of change of gender, it is common for transgender people 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.

7.7 Changing Gender at Work

The agreed statement should include the agreed date when the person intends to change their gender role. All personnel records must be updated for the transition. Employers are encouraged to create new records rather than amend old ones, to ensure confidentiality. All data protection principles must be adhered to.

7.8 The Transition Process

All employees should try and refer to the transgender person 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 and the transgender person should be aware that this could happen and be prepared to make allowances. Employers must also be aware of the genuine concerns that employees may have, and resolve any issues 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. It is advisable to discuss this in advance with the transgender person and agree informally how they would prefer this to be managed.

Any incidents of misconduct, harassment, bullying or victimisation should be dealt with quickly and in accordance with the PCT's bullying and harassment and disciplinary procedures.

7.9 Allowance of Time off for Medical Treatment

As far as possible, managers should discuss how much time the individual would need to undergo gender reassignment surgery. When the individual is absent for treatment or surgery, then sick pay entitlements should apply.

They should also follow their normal policy for medical appointments. As a matter of good practice, flexibility should be offered to individuals who may need to take holiday or rearrange working hours in order to attend additional appointments, for example, electrolysis.

Employers should remember that it would constitute unlawful discrimination if they treat an individual undergoing gender reassignment less favourably than other employees who are absent for some other medical reason.

7.10 Insurance and Benefits

Employers registering employees for corporate insurance and benefits policies should ask their underwriters if they need to be informed of a transgender employee's status, since some insurers automatically invalidate a policy if gender reassignment is not disclosed.

The employer should get the employee's prior written consent before disclosing the information. If an employer is unaware that an employee has reassigned gender, the obligation to disclose falls upon the employee, who could also be held liable in the event of an incident for which no valid insurance cover existed.

An employer should inform insurers if they require the information, in confidence, in the following cases of group insurance policies:

- a) Group life assurance
- b) Group permanent health or income protection
- c) Group private medical insurance
- d) Group personal accident insurance
- e) Group motor vehicle insurance in the case of company cars

This requirement does not apply if the person has a gender recognition certificate.

7.11 Pensions

A transgender person who receives a full Gender Recognition Certificate will be treated according to their acquired gender for state pension purposes.

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.

7.12 Occupational and Personal Pensions

In terms of pension provision, it is good practice for people to be treated as having their birth gender up to the point of transition (i.e. when they start to live fully in the acquired gender) and their acquired gender from the point of transition. This would apply for example in calculating funds transfers between pension plans.

In some cases, however, it is considered administratively convenient, with the agreement of the transgender person, to treat them as having the acquired gender for the entire duration of the pension contribution history.

8. REVIEW

This guidance will be reviewed with the Hull tPCT's recognised Trade Union Partners within 2 years of the date of implementation.

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Approved by: _____ Date: _____

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