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| <b>STANDARD OPERATING PROCEDURE:</b> | <b>SUPPORTING TRANSGENDER STAFF</b>                   |
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## 1 Introduction

- 1.1 Wrightington, Wigan and Leigh NHS Foundation Trust is committed to ensuring that all transgender employees receive equal treatment and protection from discrimination at work. This Standard Operating Procedure (SOP) underpins the values and approach included in the Trust's Equality, Diversity and Human Rights Strategy and sits alongside other relevant policies which include (but are not limited to) the, TW10-008 Recruitment and Selection Policy, TW10-134 Grievance Policy (incorporating Dignity at Work), TW10-099 Trust Code of Conduct Policy, TW10-115 Special Leave Policy and TW10-055 Attendance Management Policy.
- 1.2 A transgender person is someone who has a deep conviction that their gender i.e. whether they are a man or a woman does not conform to the sex they were assigned at birth. Many transgender people wish to change their name and personal details and live as a member of the gender with which they identify. The process is referred to as 'gender reassignment' or 'transitioning'.
- 1.3 The Trust aims to recruit the best staff and skills from across the whole of society. This includes ensuring that transgender employees 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.

## 2 Scope

This standard operating procedure provides guidance to staff who consider themselves to be transgender including those staff considering undergoing, currently undergoing or having undergone the gender reassignment process. It also provides guidance to managers and staff that may be working alongside transgender colleagues at both pre and post transition stages of gender reassignment.

## 3 Definitions

- 3.1 **Gender Identity:** a person's internal sense of where they exist in regards to being male or female.
- 3.2 **Transgender or trans person:** a person whose own gender identity does not conform to the sex they were assigned at birth. These are inclusive, umbrella terms, including people who describe themselves as transsexual, transvestite or cross dressing people, and people who have a more complex sense of their own gender than either 100% female or 100% male.
- 3.3 **Transsexual person:** legal/medical term for someone who lives (or wishes to live) permanently in the opposite gender to that assigned at birth.
- 3.4 **Gender reassignment:** the process of transitioning from the gender assigned at birth to the gender the person identifies with. This may involve medical and surgical procedures.
- 3.5 **Legal sex:** The sex recorded on your birth certificate.
- 3.6 **Gender Recognition Certificate:** issued by the Gender Recognition Panel signifies full legal rights in acquired gender and allows the issuing of a replacement birth certificate.

## 4 The Legal Framework

- 4.1 Gender reassignment is a personal, social, and sometimes medical, process by which a person's gender presentation (the way they appear to others) is changed. Anyone who proposes to, starts or has completed a process to change his or her gender is protected from discrimination under the Equality Act 2010. An individual does not need to be undergoing medical supervision to be protected. So, for example, a woman who decides to live as a man without undergoing any medical procedures would be covered. People who are discriminated against because they are wrongly perceived as trans, or who are discriminated against because of their association with trans people or issues, are also protected.
- 4.2 The Equality Act 2010 protects employees from discrimination in the following areas:
- 4.2.1 **Direct discrimination:** treating someone less favourably than other employees because of their gender reassignment, whether actual or perceived, or because they associate with someone who intends to undergo, is undergoing or has undergone gender reassignment
  - 4.2.2 **Indirect discrimination:** can occur where there is a policy, practice or procedure that applies to all workers, but particularly disadvantages people who intend to undergo, are undergoing or have undergone gender reassignment. An example might be a policy or procedure that forces individuals to disclose their gender reassignment. Indirect discrimination can only be justified if it is a proportionate means of achieving a legitimate aim
  - 4.2.3 **Harassment:** when unwanted conduct related to gender reassignment has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading or humiliating environment
  - 4.2.4 **Victimisation:** unfair treatment of an employee who has made or supported a complaint about gender reassignment discrimination.
- 5 Recruitment and Selection**
- 5.1 It should not be expected that applicants and interviewees for employment would necessarily wish to disclose their transgender status. It is not a question that should be asked at interview, as it is not a relevant criterion in selection. There is no obligation for a transgender person to disclose their status as a condition of employment. If they choose to disclose, this is not in itself a reason for not offering employment and non-disclosure, or subsequent disclosure, are not grounds for dismissal.
- 5.2 Individuals involved in the recruitment and selection process that become aware of an applicant's transgender status must maintain full confidentiality in relation to this issue. The Gender Recognition Act gives anyone applying for or holding a Gender Recognition Certificate particular privacy rights. It is a criminal offence to pass on information acquired 'in the course of official duties' about someone's gender recognition, without the consent of the individual affected. 'Official duties' includes employment.
- 6 Disclosure and Barring Checks (DBS)**
- 6.1 A member of staff having contact with patients is likely to have to apply for a DBS check. Part of this process involves a strict requirement for applicants to state all previous names and aliases.
- 6.2 DBS offers a confidential checking process for transgender applicants. This process is for transgender applicants who do not wish to reveal details of their previous identity to the person who asked them to complete an application form for a DBS certificate. For further information transgender applicants can contact the DBS by:
- 6.2.1 sending an email to the [DBS sensitive applications team](#)
  - 6.2.2 telephoning 0151 676 1452

- 6.3 Disclosures sent to the employee and the employee 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.

## **7 References and Qualifications**

When references are being provided for a transgender person, the referee must provide it, without indicating that the person has had a change of gender. If the manager has to keep evidence of professional status or qualifications and these are in the individual's original gender they should be held securely and confidentially.

## **8 Supporting Staff going through the Transition**

- 8.1 Initially, managers (and any other person acting as a point of contact) should be made aware of this Standard Operating Procedure.

- 8.2 The employee's line manager will usually be the main point of contact to support the employee in managing the transition. Human Resources, The Centre for Health and Wellbeing and Staff Side Leads are also available for advice and support.

### **8.3 Meeting with the employee**

It is a good idea for the employer and employee to write an action plan together for managing the transition at work. This, along with any other notes of the meeting, must be kept strictly confidential in the individual's personal file. The action plan could include:

- 8.3.1 The expected timescale of the medical and surgical procedures, if known
- 8.3.2 Time off required for medical treatment, if known
- 8.3.3 The expected point or phase of change of name, personal details and social gender
- 8.3.4 Whether the employee wishes to inform their colleagues themselves, or would prefer this to be done for them, and whether briefing of colleagues or service users will be necessary
- 8.3.5 The amendments that will need to be made to Trust records and systems
- 8.3.6 Any gender specific dress code requirements
- 8.3.7 Agreeing the point at which the individual will commence using single sex facilities in their new gender (such as toilets)
- 8.3.8 Discussion around the support that is available such as referral to Occupational Health (if required) and self-referral for counselling.

### **8.4 Informing Colleagues**

- 8.4.1 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. A discussion needs to be held with the individual to ascertain their preference in this regard. Employers should not inform colleagues, service users and the public that an employee is intending to undergo, or is undergoing, gender reassignment, without the individual's explicit consent. 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.
- 8.4.2 Education should take place in two ways: 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. If someone has 'transitioned' prior to joining an employer or a new department, the employer should not mention their trans history. Indeed, this could constitute a criminal offence in the case of someone who has obtained a gender recognition certificate.

### 8.5 **Changing Spaces and Toilets**

The use of toilets and other gendered facilities can occasionally be an issue in the workplace, particularly during the early stages of transition if colleagues were familiar with the employee in their former gender. The usual point for starting to use opposite gender facilities will be the day the employee starts coming to work in that identity. 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 employee concerned would object to this preoperatively. However, it is not appropriate to request that a trans person use disabled toilet facilities (unless they have a disability requiring this), neither is it permissible to expect disabled staff to accept such arrangements. Following gender reassignment surgery or legal recognition, transgender individuals must be supported to use all facilities designated for other members of their acquired gender. It must be borne in mind that successful routine use of the appropriately gendered facilities is a part of what clinicians involved in supervising a patient's gender reassignment are expecting to see. This is considered a mark of the individual's social acceptance. It is also important to appreciate that if anyone is likely to feel vulnerable in the toilet then it will most likely be the trans person – being acutely aware of the incongruity in their anatomy and certainly not wishing to draw any attention to this. The individual 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. Finally it is never acceptable to require someone undergoing gender reassignment to use toilets or other facilities designated for members of their birth gender.

### 8.6 **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. 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 in how to contribute too.

### 8.7 **Time off for medical appointments**

For individual medical appointments relating to gender re-assignment, employees should refer to the Healthcare Appointments section of the TW10-115 Special Leave policy.

### 8.8 **Time Off for Surgery**

Time off for surgery or recovery from surgery will be recorded as sickness absence. It is unlawful to treat transgender people less favourably for being absent from work for gender reassignment than they would be treated if they were absent for another reason. Please refer to the Trusts TW10-055 Attendance Management Policy and Attendance Management Support documents for guidance on the management of attendance.

### 8.9 **Redeployment**

Usually people want to stay in the same job through and after gender reassignment; but sometimes individuals may request to be redeployed into an alternative position. The Trust will consider a request for an individual to be re-deployed into an alternative position where suitable posts are available. However, if an employee is successful in securing a new post they will have no entitlement to protection of the terms and conditions of service of their previous post and the terms and conditions of the new post will apply, including, but not limited to, salary, benefits and hours of work.

## **9 Record Keeping and Confidentiality**

- 9.1 Records will only be changed when the appropriate deed certificates have been provided. Transgender people can apply to the Gender Recognition Panel to seek full legal recognition. If successful a Gender Recognition Certificate (GRC) is issued to the applicant unless the person is married. A married person may obtain an 'Interim Gender Recognition Certificate' until such time as their marriage is annulled. However all changes are allowed and supported without a GRC.
- 9.2 When 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. The Data Protection Act limits the purposes for which information may be kept. When that information is no longer useful it must be destroyed.
- 9.3 The line manager should discuss with HR to identify and agree where records are maintained that need to be changed. This will include as a minimum the Electronic Staff Record (ESR). Managers should ensure that all documentation held on the member of staff's personal file displays their affirmed gender and is secured and held confidentially.
- 9.4 **Birth Certificates**  
The person will be able to obtain a new birth certificate which will not disclose the fact that they changed gender.
- 9.5 **Work Permits**  
Staff who are working in this organisation on a work permit or student visa are asked to comply with any work permit/visa regulations which may relate specifically to name change or gender reassignment in order that the work permit/visa continues to be valid.
- 9.6 **National Insurance**  
Staff who change their name will need to inform the local social security office, providing the appropriate certificates and will pay NI contributions on the basis of their affirmed gender according to the GRC.
- 9.7 **Change in Social Gender**  
At some point the member of staff will start to live full-time in the affirmed gender and name and other records will need to be changed formally. As part of this process the member of staff will decide the appropriate point when a form of dress and the use of single sex facilities will be adopted in accordance with the new social gender. However, this change in social gender, whilst usually taking place during or after hormone therapy will sometimes occur years before the final surgical procedure, which for some members of staff this will never take place. These issues must be discussed fully with the member of staff.

## **10 Human Rights Act**

Implications of the Human Rights Act have been taken into account in the formulation of this Standard Operating Procedure and they have, where appropriate, been fully reflected in its wording.

**11 Inclusion and Diversity**

The Standard Operating Procedure has been assessed against the Equality Impact Assessment Form from the Trust's Equality Impact Assessment Guidance and, as far as we are aware, there is no adverse impact on any protected characteristics. There is a positive impact identified for transgender staff.

**12 Monitoring and Review**

A review of transgender recruitment statistics and employment profile via the Employment Equality and Diversity end of year report will be completed annually

**13 Accessibility Statement**

This document can be made available in a range of alternative formats e.g. large print, Braille and audiocd.

For more details, please contact the HR Department on 0194277(3766) or email [equalityanddiversity@www.nhs.uk](mailto:equalityanddiversity@www.nhs.uk)



# Equality Impact Assessment Form

## STAGE 1 - INITIAL ASSESSMENT

| For each of the protected characteristics listed answer the questions below using<br><br>Y to indicate Yes and<br>N to indicate No   | Protected Characteristics |     |           |                     |                    |                   |                     |               |                          |             |                   |                              |                         |        | Reasons for negative / positive impact                             |
|--|---------------------------|-----|-----------|---------------------|--------------------|-------------------|---------------------|---------------|--------------------------|-------------|-------------------|------------------------------|-------------------------|--------|--|
|  | Male / Female             | Age | Ethnicity | Learning Disability | Hearing Impairment | Visual Impairment | Physical Disability | Mental Health | Gay / Lesbian / Bisexual | Transgender | Religion / Belief | Marriage / Civil Partnership | Pregnancy and Maternity | Carers |  |
| Does the policy have the potential to affect individuals or communities differently in a negative way?   | N                         | N   | N         | N                   | N                  | N                 | N                   | N             | N                        | N           | N                 | N                            | N                       | N      |  |
| Is there potential for the policy to promote equality of opportunity for all / promote good relations with different groups – Have a positive impact on individuals and communities. | Y                         | Y   | Y         | Y                   | Y                  | Y                 | Y                   | Y             | Y                        | Y           | Y                 | Y                            | Y                       | Y      |  |
| In relation to each protected characteristic, are there any areas where you are unsure about the impact and more information is needed?  | N                         | N   | N         | N                   | N                  | N                 | N                   | N             | N                        | N           | N                 | N                            | N                       | N      | If Yes, please state how you are going to gather this information. |
| <b>Job Title</b>   | Senior Business Partner   |     |           |                     |                    |                   |                     |               |                          |             | <b>Date</b>       | September 2017               |                         |        |  |

**IF 'YES an NEGATIVE IMPACT' IS IDENTIFIED - A Full Equality Impact Assessment STAGE 2 Form must be completed. This can be accessed via [http://intranet/Departments/Equality\\_Diversity/Equality\\_Impact\\_Assessment\\_Guidance.asp](http://intranet/Departments/Equality_Diversity/Equality_Impact_Assessment_Guidance.asp)**

**Please note:** As a member of Trust staff carrying out a review of an existing or proposal for a new service, policy or function you are required to complete an EIA. By stating that you have **NOT** identified a negative impact, you are agreeing that the organisation has **NOT** discriminated against any of the protected characteristics. Please ensure that you have the evidence to support this decision as the Trust will be liable for any breaches in Equality Legislation.

**APPENDIX**

**POLICY MONITORING AND REVIEW ARRANGEMENTS**

**NAME OF POLICY:**

| Para | Audit / Monitoring requirement                   | Method of Audit / Monitoring   | Responsible person  | Frequency of Audit | Monitoring committee  | Evidence   | Location |
|------|--|--|---|--------------------|---|--|----------|
| 5- 9 | Recruitment and Selection and Employment profile | Review of transgender recruitment statistics and employment profile via the Employment Equality and Diversity end of year report | Employment Services Manager<br>Senior HR Business Partner | Annual             | Submitted to Inclusion and Diversity Steering Group and Workforce Committee | Annual Employment Equality and Diversity Monitoring report | Intranet |