

# Trans\* Equality and Gender Reassignment Policy

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V1.0	Becky Jones	2-10-14		Quality and Risk Committee
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Sponsoring Director	Chief Officers

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## 1. Policy Statement

NHS Nottingham North and East CCG, NHS Rushcliffe, NHS Nottingham West (the CCGs) are committed to:

- Supporting trans\* employees and those who are or will be in the future undergoing reassignment surgery, by providing clear guidelines to employees and managers that address work related issues that may arise.
- Eliminating the discrimination that trans\* and people undergoing gender reassignment surgery often face.

## 2. Introduction

2.1 In 1996 it was made illegal to discriminate against trans\*<sup>1</sup> people in the workplace. In 1999, gender reassignment surgery was made a legal right on the NHS. In 2000, the European Court of Human Rights established that trans\* people should be afforded legal status in the gender that they lived in. This was effected in the UK in 2004, in the form of the Gender Recognition Act 2004 and has since been superseded by the Equality Act 2010.

2.2 The Equality Act 2010 came into force on 1 October 2010. This important piece of legislation strengthened and streamlined equality legislation and created some new protections. The Equality Act 2010 provides explicit protection for trans\* people - people who are proposing to undergo, are undergoing or have undergone the process of changing their sex. These people have the protected characteristic of gender reassignment. Protection is provided from discrimination in employment, services and public functions.

2.3 The Act changed the law in several ways:

- The definition of gender reassignment makes clear that a person does not have to be under medical supervision to be protected from discrimination;
- It provides protection against direct discrimination that arises because the victim is wrongly perceived to be undergoing or have undergone gender reassignment. This may cover others within the wider trans\* community;
- Introduced a new Public Sector Equality Duty which is extended to cover gender reassignment in full. The Equality Duty will no longer be restricted to eliminating discrimination but will require public authorities to advance equality of opportunity for trans\* people;
- Provides protection for people who experience discrimination because of their association with trans\* people, for example, as their partner;
- Provides protection for trans\* people who are members or guests in a private members' club. For example, a woman who is a member of a golf club, or visiting as a guest cannot be refused entry to the bar or be

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<sup>1</sup> Please note, this Policy uses the term trans\* as an all-encompassing term and the \* is representative of this overarching term

prevented from playing when others are allowed to because she has undergone gender reassignment.

- 2.4 While only trans\* people are explicitly protected under the Act if, however, a person who cross-dresses, for instance, is discriminated against because they are wrongly thought to be trans, they will be protected under the Act.

This Policy supports the CCGs' Equality Delivery Scheme and Equality and Diversity Policy.

- 2.5 The CCGs are not merely content to comply with legislation but recognises that understanding and valuing diversity is critical to ensuring success, achieving organisational objectives and improving public trust and confidence. To this end, the CCGs are committed to recruiting, retaining and developing employees from as wide a range of backgrounds as possible.
- 2.6 The CCGs seek to attract, recruit and retain people of the highest calibre by applying the principles of fairness, consistency and equality in employment practices and systems. To this end, the CCGs believe that trans\* employees are entitled to be treated with respect and permitted to perform their jobs free from harassment and unfair discrimination. In order for this to happen, the cross-cutting themes of inclusion, equality and cohesion are key in the delivery of its services.
- 2.7 Moreover, the CCGs believe that this Policy, together with the Equality Delivery Scheme and Equality and Diversity Policy clearly set out how the CCG will meet its duty and requirements in gender equality and legislation.

### **3. Aims**

- 3.1 The CCGs are committed to equality of opportunity, both in the provision of services and in its role as an employer. The CCGs have an inclusive approach and a culture that values difference. All employees, patients and visitors have the right to be treated with fairness, dignity and respect. The working environment must be fair and supportive to individual needs. The CCGs expect that individuals who are undergoing or have undergone gender reassignment will receive the same respect and fairness in treatment as any other person.

- 3.2 The specific aims of this policy are to:

- Ensure that trans\* people and individuals undergoing the gender reassignment process are treated with fairness and support in their recruitment and career development
- Provide management guidance on the status of trans\* people undergoing the gender reassignment process
- Detail the appropriate procedure to be followed when a trans\* person applies to any one of the CCGs following gender reassignment, or states that they are about to undergo the gender reassignment process whilst in the employment of the CCG
- Explain what support should be provided to people undergoing gender reassignment
- Eliminate transphobia and gender identity discrimination within the workforce

#### **4. Who are trans\* people?**

- A trans\* person is someone who has changed their gender or has indicated their desire to do so. Being trans\* 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.
- Research supports the belief that transsexuality is a condition developed by the foetus in the womb. At twelve weeks, if the foetus is to be male, the mother's body produces a burst of the male hormone, testosterone, which masculinises the internal and external genitalia. However, it is not until four weeks later that a second hormonal trigger masculinises the brain of the foetus.
- Male and female brains differ significantly in the construction of the hypothalamus, which is responsible for the production of male/female hormones. Should one of these two hormonal triggers fail to occur, a baby will be born with the physical attributes of one gender, and the brain functions of the opposite gender.
- Transsexuality 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 How is gender transition achieved?**

- It 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 both genders. 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 a criterion in the process of definition of gender change.

##### **4.2 What legislation protects trans\* people?**

- The main legislation is the Gender Recognition Act (GRA) 2004 and the Sex Discrimination Act (SDA) 1975 (as amended by the Equal Access to Goods, Services and Facilities legislation which came into effect 6th April 2008). (Although superseded by the Equality Act 2010, the requirements remain the same, as stated above).
- The GRA gives legal recognition in their acquired gender to trans\* 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 trans\* people are afforded all the rights and responsibilities appropriate to that gender.

- The GRA made it possible for unmarried, trans\* people to apply for a full Gender Recognition Certificate (GRC). This meant that if their birth was registered in the UK, trans\* individuals would will automatically be entered on the Gender Recognition Register held by the Registrar General. The original birth register entry will be marked, confidentially, to indicate that they have become recognised in their acquired gender.
- This enabled trans\* people to marry a person of the opposite gender and be eligible for the state retirement pension and other benefits. If their birth has been registered in the UK they will receive a new birth certificate in their acquired name and gender.
- Previously, as marriage between two members of the same sex was not permitted, married trans\* people would have to divorce their spouse in order to receive a full GRC. Now, with the passing of the Equal Marriage (Same-Sex Couples) Act 2013, this is no longer required, as long as the spouse consents. Should the spouse refuse to provide the consent, the trans\* individual can apply to a Gender Recognition Panel for an interim GRC, as was the case prior to the Equal Marriage (Same Sex Couples) Act 2013. This process enables trans\* people to obtain a full GRC after their marriage is annulled, and provides a new ground for annulment to ease the process.
- Trans\* individuals who were previously in a Civil Partnership would need to convert this into a marriage.

## **5. Guidance for Managers**

Detailed guidance for line managers is included at Appendix 1. Managers may also consult The Recruitment and Retention of Transgender Staff - Guidance for Employers, Government Equalities Office & Inclusive Employers (November 2015).

## **6. Associated Documents**

This Policy should be considered alongside the Equality Delivery Scheme and Action Plan, the Equality and Diversity Policy and relevant HR Policies, including but not limited to, Bullying and Harassment Policy, Grievance Policy, Disciplinary Policy,

Recruitment and Selection Policy and Your Attendance Matters and Absence Procedures.

## **7. Monitoring and Audit of Policy**

This policy will be monitored for compliance and effectiveness at regular intervals by the Equality and Diversity Forum, a Sub-group of the Quality and Risk Committee. Monitoring will be carried out through the progression of the EDS2 action plan which is the working document that ensures the commitments in this Policy are successfully completed.

## **8. Review**

The Trans\* Equality and Gender Reassignment Policy will be reviewed on an annual basis from the date of approval by the Equality Forum and approved by the Quality and Risk Committee.

### **1. Recruitment considerations for the employment of trans\* people**

In most cases the gender of an employee is of no relevance to their ability to do their job. The CCG is committed to the employment, development and promotion of all, regardless of sex, marital status, colour, race, nationality, ethnic/racial/national origins, religious beliefs, disability, age, sexual orientation or gender identity. As such, the CCG is committed to ensuring potential employees are not discriminated against in the recruitment process.

### **2. Interviewing and Selection**

It should not be expected that applicants and interviewees for employment would necessarily wish to disclose their trans\* status. Many have experienced prejudice and harassment as a result of disclosure. 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 trans\* person to disclose their status as a condition of employment. If they choose to disclose it, this is not in itself a reason for not offering employment. Moreover, non-disclosure, or subsequent disclosure are not grounds for dismissal.

Any forms and documents that are provided during the interview and resulting procedures will be considered confidential and will not be accessible by anyone outside of Human Resources and the individual themselves.

### **3. What questions can employers ask at interview?**

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

- If there is a genuine occupational requirement for a job to be carried out by a person of a particular gender
- 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.

### **4. What about references and certificates**

When an employer is asked for a reference for a trans\* 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.

### **5. Harassment and Bullying**

All employees are entitled to receive equal support and protection from the CCG to ensure that they are not victims of harassment and bullying.

Any instances of harassment or bullying will be treated with the same degree of seriousness as other instances of bullying in the organisation. Subtle bullying, such as excluding people from distribution lists, or persistent use of the wrong pronoun (she, he) can be very undermining and will be addressed.

## **6. Issues relating to trans\* people going through the gender reassignment process during employment**

### **6.1 Time required**

Trans\* 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. 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 CCG should show the same flexibility as for someone undergoing any other serious operation.

However, this would need to be agreed from an early stage so that the requested time off could be managed effectively for the interests of both the employee and the CCG.

### **6.2 What time off should be allowed for medical treatment?**

As far as possible, employers 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, employers should offer flexibility 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 someone who is absent for some other medical reason.

### **6.3 Long term sickness**

An employer will be discriminating against the trans person if they would treat another person who is absent from work due to illness or injury more favourably. As with any other long-term illness, the individual must ensure that they keep in close contact with their manager, Occupational Health and Human Resources so that they can monitor, assess, manage and support the individual effectively. Each situation will be considered in relation to the attendance and sickness policy.

### **6.4 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.

Human Resources should be involved in agreeing the process. 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. 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 CCG and the person undergoing reassignment and will include a clear route to advice and support from HR, Occupational Health, Head of Governance, Trade Union and any other agreed source.

### **6.5 Change in social gender**

At some point the individual will start to live full time as a member of the new gender 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.

### **6.6 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 trans\* person should then be granted access to the relevant facilities. It is not acceptable, in the long term, to expect a trans\* 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.

### **6.7 Should colleagues, clients and customers be informed?**

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 trans\* status without their consent.

Education should take place on two levels. General information about gender dysphoria 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 trans\* 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, the employer should not mention their gender history. Indeed, this could constitute a criminal offence in the case of someone who has obtained a gender recognition certificate.

#### **6.8 What happens at the point of 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. Refer to the Governance Team for more information on the data protection principles.

#### **6.9 What can other employees do to make the transition easier?**

All employees should try and refer to the trans\* 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 trans\* 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 trans\* 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 CCG's disciplinary procedures.

#### **6.10 How should the CCG handle media interest?**

Instances of gender reassignment can attract the attention of the local and national press. The Communications Officer should prepare a statement which can be issued as and when necessary.

If an employee is being harassed by the media, the CCG should try and protect them, and consider strategies which minimise personal exposure and the need for the person to defend their decision.

#### **6.11 What about keeping records?**

The CCG 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.

#### **6.12 Who should have access to the records?**

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

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 or clients.

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.

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

### **6.13 When can the employer make a disclosure?**

The Equality Act 2010 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 trans\* employee could result in 'outing' them.

Any records held on a trans\* 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 1998 limits the purposes for which information may be kept, and when that information is no longer useful it must be destroyed. Please refer to the Information Governance and Security Team for more information.

### **6.14 Pensions**

This following guidance aims to provide a general framework to highlight the potential impact on pensions in general. It should not be taken as legally sound advice or as individual specific requirements. Further information can be sought from NHS Pensions.

More information on the NHS Pension Scheme can be found at <http://www.nhsbsa.nhs.uk/Pensions.aspx>

### **6.15 What is the individual's entitlement to a state pension?**

A trans\* person who receives a full gender recognition certificate will be treated according to their acquired gender for state pension purposes.

Trans\* 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.

### **6.16 What about 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 trans\* person, to treat them as having the acquired gender for the entire duration of the pension contribution history.

#### **6.17 What about survivor benefits?**

In terms of survivor's benefits, this depends in large part upon the marriage relationship or civil partnership status of the individual. Regardless of legal gender, married partners and civil partners have legal rights to certain degrees of provision. Any other provision for survivors is normally at the discretion of the trustees of the pension scheme if not specifically covered in the pension scheme.