



**NHS Greater Glasgow & Clyde**

## **Transitioning in the Workplace**

**Guidance for managers on promoting trans inclusion**

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## 1. Introduction

NHS Greater Glasgow and Clyde (NHSGGC) is committed to providing an inclusive working environment. This commitment is underpinned by compliance with equality and human rights legislation.

A central part of this legislative context is the Equality Act (2010) and associated Public Sector Equality Duty. In relation to the protected characteristic of Gender Reassignment, the Act uses the term 'transsexual' to describe a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. For the purposes of this guidance, the act of reassigning gender will be referred to as 'transitioning'. Many people consider the term 'transsexual' to be outdated, so this guidance uses the term 'trans' to refer to a person with the protected characteristic of gender reassignment. A full glossary of terms is available in Appendix B (page 19).

This guidance sets out NHSGGC's responsibilities as an employer of people who qualify for protection under the provisions made in the Equality Act (2010).

### 1.1 NHSGGC's Approach to Trans Inclusion

Trans people will not be excluded from the high standards of employment practice expected from NHSGGC.

NHSGGC recognises:

- Trans people can represent a broad spectrum of gender diversity and traditional gender stereotypes are not necessarily reflective of the lived experience of employees.
- Trans people have the right to access NHS medical gender reassignment provision and that such provision can be a vital life-saving treatment for people experiencing intense gender dysphoria.
- Trans people have the right to live with dignity and privacy in the identity they choose to reassign their sex to match.

## 2. Scope of the Guidance

The guidance should be referred to by all NHSGGC employees when required. Staff will be expected to use the guidance to support compliance with the Equality Act 2010 and the Public Sector Equality Duty. The organisation's legal duties as an employer are outlined in Appendix C.

The guidance will evolve through testing against real situations and changes to legislation. To support this, queries and feedback relating to the guidance should be directed to:

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Equality and Human Rights Team  
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This guidance should be read in conjunction with the following NHSGGC documents:

- Code of Conduct for Staff Policy
- Attendance Management Policy
- Dignity at Work Policy
- Equality, Diversity and Human Rights Policy
- Hate Incident Guidance & Guidance
- Staff Uniform and Dress Policy
- Disciplinary Policy and Procedure

### 3. Aims of the guidance

The guidance supports NHSGGC to deliver inclusive employment practice and helps evidence compliance with the Equality Act (2010) and Public Sector Equality Duty.

The guidance is written from an unequivocal position that discrimination against trans people is unacceptable, whether the discrimination is perpetrated by staff, patients or members of the public. The starting point for any discussion in relation to the rights of trans people should be one of inclusion.

Many people will be unfamiliar with the concept of transitioning and may not appreciate the significant challenges faced by trans people at this crucial point in their lives. Some members of staff may request support to better understand what this means for their colleagues.

To support work in this area, NHSGGC will:-

- Apply existing policy provision to maintain a working environment free from fear of prejudice, discrimination or harassment.
- Provide management and staff with guidance on the rights of trans employees and the legal context for this.
- Provide e-learning opportunities for staff to enhance understanding of the legal protections and context for those protections for people with the protected characteristic of gender reassignment.
- Ensure that employees who intend to undergo, are undergoing, or have undergone a process to reassign their sex are treated with fairness and support in their recruitment, retention and development.
- Facilitate access to peer support if requested via membership of NHSGGC's LGBTQ+ Staff Forum
- Support staff to contribute to culture change within this organisation.

To ensure practice is principled, evidence-based and sensitive, NHSGGC has used learning from a number of specialist agencies including the Equality and Human Rights Commission, Scottish Trans Alliance, Press for Change and work developed within NHS Forth Valley, NHS Lothian and NHS Lanarkshire. In addition, this resource has been informed by guidance written by the unions Unite and Unison

## **4. Our responsibilities as an employer**

National evidence has shown that a disproportionate number of trans people are unemployed or employed in low paid work. Much of this relates to perceived or real discrimination in the workplace. NHSGGC will work to promote the organisation as a credible employer of choice for trans people and ensure HR policies are applied in an inclusive way.

(The legal framework protecting the rights of trans employees has been included in **Appendix C.**)

### **4.1 Respecting the gender identity of trans employees**

NHSGGC will support trans staff to be treated in line with their reassigned sex irrespective of whether they have undergone any supervised treatment or have a Gender Recognition Certificate (GRC).

It is not acceptable for colleagues and managers to refuse to recognise a member of staff as belonging to the gender in which they are currently living by continuing to address them by previously used names or pronouns.

Discrimination from staff, patients or the public will be addressed by managers. In the case of staff being discriminatory, managers should use the relevant policies/procedures to resolve the situation.

As a Public Body, NHSGGC must show due regard to foster good relations between individuals who share a protected characteristics and those who do not. To this end NHSGGC share the responsibility to ensure non-trans members of staff have the opportunity to learn about trans identities and have any questions or concerns addressed.

### **4.2 Genuine Occupational Requirement (GOR)**

The Equality Act (2010) provides limited exemptions for GOR positions to limit access for trans people. These exemptions can only be applied in order to achieve a legitimate operational need. All efforts should be made to enable trans employees to work in positions, including those covered by General Occupational Requirements, consistent with the gender in which they are living.

Where a trans person currently works in a GOR position restricted to their biological sex, every effort will be taken to work collaboratively with them to either adapt the duties of the post to enable them to continue working in it or to find them a comparable alternative post. It is not appropriate to redeploy someone who wishes to transition because this is perceived to be in their best interests.

## 5. Transitioning – Points for consideration

Every manager employed by NHSGGC is responsible for promoting equality of opportunity in employment and preventing discrimination.

Line managers are responsible for:

- Ensuring that all staff are aware of this guidance, attend any relevant training and are signposted to any further sources of information. NHSGGC's Equalities in Health website ([NHSGGC - Equalities in Health](#)) is a good starting point.
- Agreeing a plan with a staff member who is proposing to transition to ensure that they are supported throughout the process.
- Ensuring that a trans person is addressed and treated in line with the gender they identify with.

Initially, managers (and any other member of staff acting as a point of contact) should ensure they are familiar with this guidance and any other appropriate policies in order to support the individual fully.

Through discussion with the employee, a main point of contact will be agreed. A meeting will be arranged with the nominated person to have a more detailed discussion and to support the process for handling the transition.

Where required, the individual concerned should be linked to an agreed member of the Human Resource Team or Equality and Human Rights Team to act as an advisor and to provide guidance and advice to the member of staff and their manager. They may also wish to bring a friend or support with them to the first meeting. The Equality and Human Rights Team is available for advice on all trans-related issues.

Supporting members of staff who are transitioning is set out in detail below.

### 5.1 Supporting transitioning staff – a manager's role

The successful support of an employee's transition depends crucially on taking account of the individual's views on how best to proceed.

It should be noted that the first contact may be just to "sound out options". Some trans people may take several months or years to gradually explore the possibility of transitioning. Some may only change their outward gender presentation after a period of varying gender expression.

When a member of staff considers transitioning, the initial point of contact may vary according to the nature of the workplace and preference of the individual, but could be; an immediate line manager, a senior manager, Human Resource Manager,

Equality and Diversity lead, Occupational Health Department representative or any other appropriate member of staff.

Whoever is chosen, they must maintain confidentiality unless disclosures are agreed by the trans employee. It is vital to assure them that NHSGGC will be supportive and that discrimination or harassment of trans employees will not be tolerated.

## 5.2 First Meeting

Depending on the circumstances the employee may be anxious so it is important to spend time building trust and rapport.

If an employee is transitioning, it is good practice for the manager to consult with them sensitively about their needs in the workplace and whether there are any reasonable and practical steps that can be taken to help the employee as they undergo their transition.

It may help to support discussion to use **Appendix F** as a guide to developing a joint action plan with the staff member for managing the transition at work. This, along with any other notes of the meeting, must be kept strictly confidential in a secure location.

## 5.3 Developing a joint plan for managing transition at work:

The action plan could include:-

- The anticipated point or phase of change to the person's name, personal details and social gender.
- Date of starting to work in new gender.
- Amendments that will need to be made to records and systems and notification to any professional bodies. (See 6.5)
- A procedure for adhering to any change in dress code/uniform.
- The point at which an individual will commence using facilities such as toilets and changing rooms that match their reassigned sex, and that any adaptations required to enable this are made.
- How and when the person would like colleagues to be informed. The staff member may prefer the manager to do this or address themselves.
- Any actions the manager will take to ensure that the team understand trans issues. This would include ensuring that all staff have completed existing equality and diversity training including NHSGGC's LGBTQ+ e-learning module.



- Whether a trans employee is adequately covered by existing Guidance on issues such as confidentiality, harassment and insurance and if not, how these will be amended.
- Any changes required to job role where affected by the change of gender identity e.g. where the role has a “genuine occupational requirement” to be a particular gender (See section 4.2.)
- Time off required for medical treatment (if known). This may vary considerably in accordance with the needs of individuals concerned. To be discussed with Occupational Health Department for general advice and identified point of contact.

After a person has transitioned, it would not be appropriate to keep these records within the personal file.

Any information relating to an individual’s gender reassignment should be destroyed unless there is an essential reason for keeping it. If such reasons can be evidenced, the documents should be secured to restrict access to authorised personnel and must not be passed to any third party without the specific consent of the member of staff. It may be useful to involve Occupational Health and Data Protection Department for advice. **See section 6**

An example of an Action Plan to support discussion is available in **Appendix F**

#### **5.4 Change in Social Gender**

At some point the employee will likely wish to present in their reassigned sex. At this point the plans agreed under the previous section should be implemented.

If records and documents have not been updated to reflect the employee’s new name and title (if applicable), they must be updated. Appropriate procedures for this are discussed elsewhere in his guidance.

It is important to allow the employee to be in control of the timetable for this and to be flexible in the case that the employee experiences challenges leading to delays in any part of it.

#### **5.5 Informing and Supporting Colleagues**

It is good practice for employers to take responsibility for informing whoever needs to know, unless the transitioning individual would prefer to do this. The manager must not inform colleagues, patients or the public that an employee is intending to undergo, is undergoing or has undergone a process to reassign their sex without the employee’s explicit written agreement.

With regard to the change of name, all staff must refer to the trans person by their preferred name and use pronouns appropriate to their reassigned sex. Mistakes can happen, but deliberate miss-gendering is malicious and should be dealt with as per instructions in the Bullying and Harassment Policy.

If required, colleagues should be given general information or awareness training about trans issues (e-learning module available via LearnPro) and specific information to help understand the needs of a person transitioning. Any additional issues or areas of concern requiring further clarity can be discussed with a member of the Equality and Human Rights Team or identified point of contact.

It is never appropriate to inform colleagues, clients and the public that an employee has a gender reassignment history. A disclosure may result in a criminal offence if the person concerned has a Gender Recognition Certificate (GRC) and it is done without the explicit consent of the individual concerned. It is good practice to assume all trans people hold a GRC.

## **5.6 Staff in Public Facing Roles**

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

There is no general need or obligation to inform colleagues, clients or the public that a person is transitioning. However, this may be considered appropriate where there is a pre-existing relationship that will continue post-transition. This should only be done with permission from the member of staff who is transitioning. Each situation is different and the ways of informing people should be agreed on a needs-led basis. Examples of a range of statements which can be used dependant on circumstances are included in Appendix A. However, these can only be used with prior approval of the trans person.

The potential for negative reactions from certain members of the public must not be a barrier to trans people undertaking a public facing role. NHSGGC will take a zero tolerance approach to discriminatory attitudes or behaviour from staff, patients and the wider public.

## **5.7 Time off for appointments**

In line with NHSGGC's Attendance Policy, any absence from work for more than 7 calendar days for medical requirements would need to be covered by a 'Fit Note' or equivalent. Any additional leave for specialist appointments would be classed the same as other hospital / GP appointments and in accordance with organisational procedures.

The Public Sector Equality Duty to advance equality of opportunity requires organisations to have regard for the need to remove or minimise disadvantage and meet the different needs of those with a protected characteristic. This encourages employers to take positive action that removes the significant disadvantage that would inevitably be incurred by staff undergoing medically supervised gender reassignment procedures. This should be discussed on an individual basis and could include ensuring time off for medical appointments.

## 5.8 Facilities

Where facilities do not afford reasonable levels of privacy for staff (communal changing areas without lockable cubicles etc.) opportunities should be explored to upgrade facilities if this constitutes a proportionate means of achieving a legitimate aim. This is not a consideration to 'protect' trans or non-trans staff, but rather to ensure that members of staff, irrespective of their age, disability, sex, gender reassignment, race/ethnicity, religion/belief or sexual orientation are accorded the right to privacy.

The use of changing/showering facilities and toilets will be part of the discussion with the transitioning member of staff, with a view to agreeing the point at which the use of facilities should change to match reassigned sex. An appropriate stage for using the facilities is likely to be the point when the employee socially transitions.

Should there be any objections to this; the objections will be considered by a manager in a sensitive and understanding way while considering if excluding the trans employee could be objectively justified and considered a proportionate means of achieving a legitimate aim. The Equality and Human Rights Commission's Guide for Single and Separate Sex Service Providers - [EHRC Guidance](#) – offers further direction on this.

Transitioning employees must not be asked, expected or required to use accessible facilities allocated for disabled people (unless they have a disability which requires this).

Once the transitioning process is complete, the individual should be fully supported to use all facilities that match their reassigned sex unless any limitations can be objectively justified.

NHSGGC will work with the trans employee to review arrangements for toilet/shower/changing facilities and make any proportionate upgrades where required. Any unsatisfactory practical arrangements must be reported to the designated Manager as soon as possible. It is not appropriate to direct a trans employee to use facilities that match their biological sex.

## 5.9 Dress Code

NHSGGC has a Staff Uniform and Dress Code Policy which fully supports any trans member of staff with regard to the clothing they feel best represents their gender identity (in line with agreed National Uniform Policy or local derivative, Infection Prevention and Control IPC and Health and Safety practices and policies).

## 6. Personal Data & Information

### 6.1 Retention

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: -

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

Any such information must be treated with the utmost confidentiality and included only as "sensitive data" (Data Protection Act) in any records which must not be available to or accessible by anyone not specifically authorised or agreed with the specific employee to have access.

### 6.2 Proof of right to work in UK

A passport, national identity card or Home Office issued residence document are the relevant primary identification documents that Managers should request in order to prove a person has the right to work in the UK. A birth certificate should only be requested if none of those documents are available. It is possible for a trans person who is a UK national to obtain a UK passport with their new gender identity at the start of their gender reassignment process.

If a trans person does not have a UK passport in their new gender identity then their original name and gender may be present on a document shown. In such cases the Manager should explain that retaining a copy of the document on the employee's record is a legal requirement imposed by the UK Government. They should also explain that if they employee later gains a new document then the original can be replaced. Confidentiality of this information must be maintained.

### 6.3 Record Keeping

All records should be updated to reflect the new name, title and gender on receipt of a written request from the trans person. No formal evidence is required in support of the written request, although many trans people may choose to provide a statutory declaration or deed poll confirming their change of name. Records must be updated whether or not the trans person is undergoing any aligned medical treatment or has a GRC.

After two years living in their acquired gender with all their records updated (except their birth certificate), trans people have the option of applying to the Gender Recognition Panel for a Gender Recognition Certificate which makes provision to

change legally recorded sex on the person's UK birth certificate and provides enhanced gender history privacy protections.

A trans member of staff is under no obligation to provide a gender recognition certificate to their employer, nor should anyone be asked if they hold one under any circumstances.

The Manager and appointed Human Resource Manager should advise on where records are maintained that need to be changed. Managers and Human Resources staff should ensure that all documents, public references (such as telephone directories, web biographies etc.) and employment details display only their new name, title and gender (where required).

Wherever possible, all records that disclose gender history should be withdrawn and destroyed as soon as the person makes a written request for their name and gender to be updated on their employment records. Any copies needing to be kept for legal reasons (for example, proof of right to work in the UK) in the person's HR file have to be treated as sensitive data under the Data Protection Act and not disclosed to anyone not specifically authorised to see them.

When documents have been seen and copies taken at the point of starting employment (such as birth certificate) then every effort will 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 the information is no longer useful, it must be destroyed. In some instances, it is necessary to retain records relating to an individual's identity at birth, for example, for 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.

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 staff who need the information to do their work.

Such people could include those directly involved in the administration of a process, for example, Occupational Health Professional, or the person who authorises payments into a pension scheme. They do not include colleagues, line managers or third parties.

Breaches of confidentiality about a person's trans history must be treated in the same serious manner as disclosure of sensitive personal information (for example, medical details) of any other member of staff. In addition to being data protection violations, breaches of confidentiality can constitute discrimination or harassment under the Equality Act (2010). It must also be recognised that such disclosure after the receipt of a GRC is a strict liability of a criminal offence and may be subject to internal investigation in line with NHS GGC's policy framework. Information about exceptional circumstances where it is lawful to disclose someone's gender history can be found here [The Gender Recognition \(Disclosure of Information\) \(Scotland\) Order 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/11/section-10).

Trans staff may choose voluntarily to disclose information at a secondary level, e.g. answering a staff survey or asking for support from a line manager. Again, strict confidentiality must be observed as further disclosure must not be made without the express written permission of the individual. This means that such questionnaires must be assessed for impact beforehand to determine how such circumstances are going to be handled in confidence.

It is not an offence to disclose protected information if the person cannot be identified or if they give their consent. Such consent however must not be forced, and should be written confirmation of consent from the individual concerned.

## **6.4 Work Permits**

**Staff who are working for NHSGGC 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.**

## **6.5 National Insurance**

Staff who change their name will need to inform the Department of Work and Pensions.

People will be referred to in their new gender pronouns by HM Revenue and Customs, but any gender-specific calculations relating to their pension, national insurance contributions or benefits will be based upon their original birth gender unless and until they receive a GRC.

## **6.6 Professional Registration**

Staff that are professionally registered are advised to contact their professional bodies to find out whether there are any specific requirements in terms of name changes.

Where the organisation has to keep evidence of professional status or qualifications, it should be discussed with the member of staff how this information will be retained so as not to compromise or breach disclosure of protected information.

## **7. Recruitment and Selection**

### **7.1 Recruitment**

It is intended that there be no barriers to a person who identifies as trans from applying for employment within NHSGGC. All those involved in the recruitment and selection process should be made aware of their responsibilities to select fairly and without prejudice.

### **7.2 Confidentiality within the recruitment and selection process**

Applicants do not have to disclose their trans status during the recruitment and selection process, including at interview, or as any condition of employment.

If applicants choose to disclose their status this must not be used as a reason for not offering the person employment with the organisation and also non-disclosure or subsequent disclosure are not grounds for dismissal.

### **7.3 Protection of Vulnerable Groups (Scotland) Act 2007**

Specific guidance for trans people completing a Disclosure form is available on the Disclosure Scotland website. Disclosure Scotland operates an application process for trans people to assist in ensuring discretion is afforded to such individuals who do not wish their previous gender (and names) to be disclosed to the person or organisation requesting the Disclosure. Any questions on this process should be directed towards the Disclosure Scotland Helpline on 0300 020 0040 (Please ask to speak in confidence with the Operations Manager).

Existing employees may also seek advice from HR who can also assist with this process.

## 8. Dissemination and Implementation of Guidance

The Director of Human Resources and Organisational Development, who is executive lead for staff equality and diversity and the Planning and Development Manager, Equality and Human Rights Team, are responsible for the implementation of this guidance.

The process for approving and implementing the guidance is as follows;

- Area Partnership Forum approval
- Guidance plus the Equality Impact Assessment will be added to the NHSGGC HR policies library and the EQIA online repository.
- A clear communication will be sent to all managers and staff publicising its existence
- Trans e-learning package is available for all staff within Learn Pro system.

The group responsible for overseeing the implementation of the Guidance is the Workforce Equality Group. Their role is to;

- Oversee the development and monitoring of the Guidance
- Fully review the guidance every three years or earlier if indicated from the result of monitoring and review, legislative changes, a national policy instruction or NHSGGC decision.
- Consult with members of the trans community when appropriate
- Report and respond to any issues of discrimination or non-compliance of the Trans Guidance.

**This document was approved by the Area Partnership Forum 2018**



## Appendix A – Brief for front facing staff/reception staff

**This guidance can only be used with the transitioning employee's permission.**

Where patients have not previously met face-to-face with the transitioning employee, there should not be any need to link the two names or provide any explanation.

### **Patient**

Can I have an appointment with John Smith?

### **Response**

You may not as yet be aware of a recent change within the Department/Directorate/Clinic but John Smith will now be known as Mary Smith. The first available appointment with Mary Smith will be.....

### **Patient**

No I want to see someone else

### **Response**

OK, I can offer you an appointment with someone else on.....

**OR**

### **Patient**

Are you telling me that John Smith is now a woman?

### **Response**

Yes, John Smith will now be known as Mary Smith.

The department/Directorate/organisation/Clinic is very supportive of this change and we can reassure you that this change will not have an impact on the care we deliver.

Would you like me to make you an appointment with Mary Smith? I can give you the first available appointment which will be.....or I can offer you an appointment with someone else on.....

**OR**

### **Patient**

So has John Smith left?

### **Response**

No, **John Smith** will now be known as **Mary Smith** The department/Directorate/Organisation/clinic is very supportive of this change and we can reassure you that this change will not have an impact at all on the care that we deliver. Would you like me to make you an appointment with **Mary Smith**, I can give you the first available appointment which will be.....or I can offer you an appointment with someone else on.....

If the caller persists in making any requests/comments beyond those included above the following statement may also prove helpful.

“I am very sorry, I am sure you will understand I am not at liberty to discuss any details beyond what I have already shared as you will understand the organisation very much want to respect **Mary Smith’s** confidentiality.”

If the patient raises concerns or becomes abusive the caller should be referred to someone else more senior for further discussion. If abusive, a Datix report should be completed.

## Appendix B - What Does Trans Mean?

When a child is born, the midwife or doctor identifies it as a boy (male) or a girl (female) through a belief that a person's gender status can be ascribed on the basis of the visual appearance of their external genitals. The early assumption made is that sex and gender are interchangeable and that everyone can be divided into two, mutually exclusive gender categories – boy or girl.

In most cases, the gender assumptions made on the basis of the external genitals of the baby work, with maturing children feeling a sense of comfort with their assigned gender.

However, sex and gender are more complex than just the visual appearance of external genitals at birth. Variance can therefore occur in any of three main ways – biological sex variance, gender identity variance and gender expression variance.

A person's **biological sex** includes all aspects of their sex-related biological structure: not only their external genitals but also their internal reproductive system, their chromosomes and their secondary sexual characteristics such as breasts, facial and body hair, voice and body shape. Most people's biological sex will be clearly and consistently female or male. However, a small but significant number of people have bodies which are not completely male or female. People born with these kinds of physical variations are referred to as **intersex people**.

An individual's **gender identity** is their internal self-perception of their own gender. A person may identify as a man, as a woman, or as having a 'non-binary' gender identity which is more complex or fluid.

A person's gender identity may not match up with their biological sex. A person's understanding of their own gender identity usually develops during the early years of their childhood and often (but not always) becomes permanent by the time they go through puberty. Unlike someone's physical body, a person's gender identity is as invisible as their personality when they are born. A person's gender identity remains hidden from others unless the person decides to articulate or express it in some way.

An individual's **gender expression** is how they present themselves through their external gender-related appearance (including clothing and hairstyle) and their behaviour (including hobbies/interests and mannerisms). A person may have masculine, feminine or non-gender specific aspects of appearance or behaviour.

In Scotland, it is currently common to use the terms **trans people** and **trans** as 'umbrella' terms to cover the many diverse ways in which people can find their personal experience of their gender and possible variations from the assumptions and expectations of the society they live in. The umbrella terms **trans people** or **trans** can therefore include transsexual people, cross-dressing people, people with non-binary gender identities and others.

**Transsexual people** consistently and strongly self-identify as a different gender from the gender they were assigned at birth based on their biological sex and therefore experience an intense need to transition from male to female (trans women) or from female to male (trans men). This may or may not involve hormone

treatment or undergoing various surgical procedures.

**Transitioning** is also known as **gender reassignment**. It is an individualised process which varies in length, stages and complexity from person to person. In addition to social changes such as starting to use a new name and pronouns, it may (but does not have to) involve physical changes through hormone treatment and sometimes surgical procedures. Whether or not someone accesses hormone treatment or various surgeries is a private and personal decision and is not relevant to their right to have their gender identity respected.

**Gender dysphoria** is a recognised medical issue for which gender reassignment treatment is available on the National Health Service in Scotland. Gender Dysphoria is distress, unhappiness and discomfort experienced by someone about their biological sex not fully matching their gender identity.

A **trans woman** is someone who was assigned male at birth but has a clear and constant gender identity as a woman. She therefore experiences an intense need to undergo male to female (MTF) gender reassignment to live completely and permanently as a woman.

A **trans man** is someone who was assigned female at birth but has a clear and constant gender identity as a man. He therefore experiences an intense need to undergo female to male (FTM) gender reassignment to live completely and permanently as a man.

People with **non-binary gender identities** find they do not feel comfortable thinking of themselves as simply either men or women. Instead they feel that their gender identity is more complicated to describe. Some may identify their gender as being a combination between a man and a woman, or alternatively as being neither. Like transsexual people, non-binary people can experience gender dysphoria (sometimes as intensely as transsexual people do) and may undergo a process (or part of a process) of gender reassignment.

**Cross-dressing people** simply wear, either occasionally or more regularly, clothing associated with the opposite gender (as defined by socially accepted norms). Cross-dressing people are generally happy with the gender they were labelled at birth and do not want to permanently alter the physical characteristics of their bodies or change their legal gender. They may dress as the opposite gender for emotional satisfaction, erotic pleasure, or just because they feel more comfortable doing so.

## **General Information**

People who intend to transition (undergo any part of a process of gender reassignment) or have transitioned to live permanently in their self-identified gender have legal protection in regard to employment and goods, facilities and services provision under the Equality Act 2010. Therefore, public sector organisations such as the National Health Service must give due regard to promoting equality and eliminating discrimination and harassment on grounds of gender reassignment as part of the General Equality Duty (GED).

NHSGGC has voluntarily adopted best practice (as recommended by a number of

Scottish equality organisations and trade unions) to promote equality on the grounds of gender status and gender expression and to eliminate transphobic discrimination and harassment for all employees and service users, regardless of whether or not they intend to undergo gender reassignment.

Details of the types of discriminatory behaviour often experienced by trans people are included as **Appendix C** to this Guidance.

The [Scottish Trans Alliance](http://www.scottishtrans.org/) has a range of guidance and resources to support people transitioning or have transitioned or staff who require further information.  
<http://www.scottishtrans.org/>

NHSGGC's website [www.equalitiesinhealth.org](http://www.equalitiesinhealth.org) also provides further information and contact details of local and national groups.

## Appendix C - Legal protection

The foundation of delivering services that are non-discriminatory must be compliance with the law. As a starting point on the journey to delivering fully inclusive and accessible services, NHSGGC staff must be familiar with their legal responsibilities in relation to working with trans service users and trans staff. This section details the relevant legal considerations for practice.

### Equality Act 2010

Employment and goods, facilities and services equality law makes clear that gender reassignment direct discrimination, indirect discrimination and harassment are all unlawful. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

It is important to recognise that this means someone has the protected characteristics of gender reassignment if they simply propose to change the gender of name and pronouns they use, even if they do not wish to change any aspect of their physical body.

People are also protected if they face discrimination due to being associated with a trans person (for example, if they are a friend or family member) and due to being incorrectly perceived to be trans when they are not actually a trans person.

### LEGISLATIVE DEFINITIONS OF UNLAWFUL BEHAVIOUR RELATING TO GENDER REASSIGNMENT

**Direct discrimination** - Treating a person less favourably than another in comparable circumstances because of their gender identity.

**Associative discrimination** - is direct discrimination against someone because they are associated with another person with the protected characteristic of gender reassignment.

**Discrimination by perception** - is direct discrimination against someone because others think they have the protected characteristic of gender reassignment even if they do not.

**Indirect discrimination** - putting in place a Guidance or practice that has a differential (positive or negative) impact on someone who has the protected characteristic of gender reassignment when this cannot be objectively justified.

**Harassment or bullying** - unwanted conduct which has the purpose or effect of violating someone's dignity, or which is hostile, degrading, humiliating or offensive to someone who has the protected characteristic of gender reassignment.

**Victimisation** - treating someone unfavourably because they have taken (or may be taking) action under the Equality Act or supporting someone who is doing so.

The Equality Act 2010 places a statutory duty on all public sector organisations to show due regard to the need, to eliminate unlawful discrimination and harassment and promote equality of opportunity and promote good relations between people who have the protected characteristic of gender reassignment and those who do not. The Act places a responsibility on statutory services to pro-actively promote non-discriminatory practice, moving the focus away from an historic reactive complaints-orientated approach. This means services must invest resource to ensure functions (including promotion of services) are fit for purpose and meet the needs of diverse groups through an intensive process of planning, development and reflection/assessment.

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

This Act of Parliament gave legal recognition to trans people following a permanent change of gender. It sets out the process for individuals to apply for a Gender Recognition Certificate (GRC) after living full-time in their acquired gender for at least 2 years. It is not necessary for someone to have undergone genital surgery or any other medical intervention other than a diagnosis of gender dysphoria to receive a full GRC.

Once a full GRC is issued to a person, their legal sex/gender henceforth becomes for all purposes their acquired gender – including for marriage and civil partnership purposes and for employment in posts where a Genuine Occupational Qualification to be a particular sex/gender applies. People with a GRC can apply for a corrected birth certificate if their birth was registered in the UK. A person who has received a GRC is not required to show their GRC to others such as employers or service providers. It is not an identity document and will not be carried on the person.

It is very important to note that employers and service providers must change, on first request by an individual, their name and gendered title (i.e. Mr, Miss, Ms) on all their employment, medical and other records, identity badges and future correspondence. The individual needs only to state in their request that they are starting a process of gender reassignment to live permanently in their acquired gender.

Trans people do not need to show a GRC in order to change their day-to-day documentation or to use the toilet facilities of their reassigned sex. As it is necessary to live fully in the acquired gender for at least two years before applying for a GRC, a refusal by an employer or service provider to allow these changes at the start of an individual's gender reassignment process may unfairly prevent that individual from later being able to apply for a GRC and consequently would be discriminatory.

Section 22 of the Gender Recognition Act 2004 makes it a criminal offence, with a fine of up to £5000 on conviction, for any person to disclose information which they have acquired in an official capacity about an individual's application for a GRC, or about the gender history of a successful applicant. If a person has a GRC, or it could be assumed they might have a GRC (for example they are living permanently in their acquired gender), then this cannot normally be disclosed further in a way which identifies the person involved without that person's express consent or, more exceptionally, a specific order by a court or tribunal.

Section 22(4) of the Gender Recognition Act 2004 states specific exempt circumstances where it is not an offence to disclose protected information about a person's application for a GRC, or about that person's gender history. The exempt situations of relevance to NHS GGC are where:

- The information does not enable that person to be identified;
- That person has agreed to the disclosure of the information;
- The disclosure is in accordance with an order of a court or tribunal;
- The disclosure is for the purposes of preventing or investigating crime.

The Gender Recognition (Disclosure of Information) (Scotland) Order 2005 provides a limited exception permitting disclosure for medical purposes of the protected information about someone's gender recognition history ONLY where ALL of the following three criteria are met:

- The disclosure is made to a health professional; and
- The disclosure is made for medical purposes; and
- The person making the disclosure reasonably believes that the subject has given consent to the disclosure or the subject cannot give such consent (for example, unconscious).



## Appendix D - Health Outcomes for Trans People

There is strong evidence that trans people as a social group experience disproportionately poorer health than non-trans people. Trans people are more likely to suffer from mental health issues including depression, suicide ideation and addiction-related behaviour and self-harm. Trans people are also more likely to be victims of crime and where their trans status is known, be subject to bullying and harassment throughout their lives. Trans people are also more likely to have difficulty accessing sports and leisure facilities necessary to maintain good physical health.

Transphobic (discriminatory behaviour based someone's trans status) attitudes not only impact on the health of trans people but on the health and wellbeing of family and friends. Children of trans people and other family members and friends can, through association, face verbal and physical abuse on a daily basis.

### **Discriminatory practice**

Trans people may experience some or all of the following examples of discriminatory practice:

- People refusing to associate with or ignoring them because of their trans status.
- Not being addressed in their acquired gender or not having their new name used.
- Having their personal life and relations probed into.
- Having malicious gossip spread about them.
- Having confidential information relating to their trans status released without their approval,
- Not being allowed to use sanitary facilities that are appropriate to the gender in which they live.
- Being treated less favourably than others in regard to sickness or other absences.
- Being refused access to services, facilities or premises due to prejudice from staff or other service users.
- Being verbally abused or physically assaulted because of their trans status.

We will develop a shared understanding and response to the needs of trans people and become a catalyst for change, taking our understanding back to the communities where we work to challenge attitudes and discrimination that perpetuate and contribute to poor health outcomes for all marginalised groups.

## Appendix E: Case Study

### Workplace Scenario:

A department manager is approached by a male colleague who asks for 'five minutes' to discuss a personal matter. The manager is informed that a member of staff from another department (who is currently transitioning from female to male) had entered the male toilet while a male member of staff was using a urinal. The employee feels it is inappropriate that this can happen; stating rights to privacy have been compromised through having to share facilities with this colleague. He states the previous month, the member of staff in question was 'coming to work as a woman'. He suggests it might be better for everyone if the accessible toilet for disabled people is used by them.

The manager considers the issues as detailed by their colleague. They explain that it can be difficult to segregate toilet facilities for staff in this way and that she's pretty sure the trans person has legal rights that could be enforced. That aside she can understand that some members of staff may feel uncomfortable with the present arrangements and promises to speak to the manager of the trans person to see if a compromise can be reached.

### Analysis

The immediate issue appears to be an apparent lack of planning and support for the transition of a member of the workforce. While not all trans employees will want to publicly disclose their intended transition, the workplace should have arrangements in place to support the employee in this instance. It may be that in the early days of transitioning another member of staff who's supportive can accompany the trans employee to the toilet facilities.

The above aside, the manager has a clear duty to ensure that the trans person does not feel excluded or harassed in the workplace and is afforded the same level of dignity and respect as non-trans employees. This needs to be explained clearly but also balanced against the views of other users of the facility. The manager needs to be familiar with legal rights in this instance and perhaps some contextual information relating to the challenges faced by trans people on society.

This can help explain the process and create a better understanding of gender variance. An agreement to provide a separate toilet facility for the trans person is unreasonable and inappropriate and would result in the employee feeling excluded in the workplace. It could also be challenged legally – similar cases where trans people have been forced to use accessible toilets or separate changing facilities have resulted in significant awards in favour of the trans person.

## Appendix F - Points to discuss or consider for Supporting Staff Transitioning.

A Person Centred approach should be taken and all discussions/actions should be discussed and agreed on a 1:1 basis with the individual concerned.

Details	Date
<b>Main Contact</b>	
Identify a single point of contact to support the individual, agree an action plan and coordinate arrangements between NHSGGC and member of staff. This would normally be a manager, equality lead, HR or senior member of the department, who would liaise with Human Resource Services, or the Occupational Health Service. It can also be someone from a similar professional body i.e. RCN, RCGP etc Consider if the role has any occupational requirements	
<b>Time table</b>	
<ul style="list-style-type: none"> <li>• What is likely timetable for transition? e.g. Dates for name change (Individual to identify preferred name)</li> <li>• Use of facilities (toilets, changing rooms)</li> <li>• Change of presentation e.g. from suit to a dress or change of uniform attire?</li> <li>• Change of records</li> </ul>	
<b>What identification needs to be changed?</b>	
<ul style="list-style-type: none"> <li>• E-mail address</li> <li>• Web link</li> <li>• ID- Name Badge</li> </ul>	
<b>What documents and records need to be changed?</b>	
<ul style="list-style-type: none"> <li>• NHSGGC records</li> <li>• Department records</li> <li>• Professional bodies</li> <li>• Trade union membership</li> <li>• Payroll (banking details)</li> <li>• Pension scheme</li> <li>• Web details</li> <li>• Committees and groups (at agreed time)</li> <li>• Does the employee have multiple posts within NHS?</li> </ul>	
<b>Transition Process</b>	
<ul style="list-style-type: none"> <li>• Is the individual taking any extended time off? Is this additional paid/unpaid leave?</li> <li>• Is time off needed for medical appointments (which may</li> </ul>	

<p>require to be taken during normal working hours)</p> <ul style="list-style-type: none"> <li>• How can ongoing medical procedures be accommodated i.e. M/F transition may need facial hair removal. Consider whether this can be accommodated by working flexi hours/or home working</li> <li>• Is the individual having planned surgery?</li> <li>• <u>Recovery</u> may take between one to twelve weeks. Staff will receive standard sickness leave but may wish to negotiate an alternative</li> <li>•</li> <li>• What arrangements have been put in place to support an individual's return to work? Occ Health may support phased return?</li> </ul>	
<b>Details</b>	<b>Date</b>
<b>Support for individual/communication</b>	
<ul style="list-style-type: none"> <li>• How will colleagues be informed? Can statement be agreed and who delivers it?</li> <li>• How and when will external contacts be informed?</li> <li>• Is there training needed?</li> <li>• What is the impact change may have on their work and adjustments that could be made.</li> </ul>	
<b>Discrimination</b>	
<ul style="list-style-type: none"> <li>• Are there clear guidelines and processes to deal with direct or indirect discrimination or harassment of trans person?</li> <li>• Are systems in place in to address any adverse publicity or reactions from patients etc to ensure the employee is supported?</li> </ul>	