

Trans Staff Support Policy

Version No: 1

Document Summary:

The purpose of this policy is to support employees who are considering undergoing, currently undergoing or have undergone gender reassignment.

The policy applies to all Mersey and West Lancashire Teaching Hospitals NHS Trust employees, as well as volunteers and any applicants applying for employment with the Trust. For the purpose of this document the term ‘trans’ will be used as it is a more encompassing term and generally accepted by the trans community. It is considered an umbrella term for all people who cross gender boundaries permanently or not

This document should be read in conjunction with the Transitioning in Workplace SOP

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Document type	Policy	Trust wide
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Accountable Director	Director of Human Resources	
Policy Author	Head of Equality, Diversity & Inclusion	
Target audience	All staff	

The intranet version of this document is the only version that is maintained. Any printed copies should therefore be viewed as “uncontrolled”, as they may not contain the latest updates and amendments.

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Document Control

Section 1 – Document Information	
Title	Trans Staff Support Policy
Directorate	Corporate
Brief Description of amendments	
<ul style="list-style-type: none"> • Removal on procedure and guidance into a SOP • Updating definitions, list of transition steps • Outline of exemptions e.g. Genuine Occupational Requirements <p><i>Please state if a document has been superseded.</i></p>	
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Are all mandatory headings complete?	Yes
Does the document outline clearly the monitoring compliance and performance management?	Yes
Equality Analysis completed?	Yes
Data Protection Impact Analysis completed?	Yes

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Consultation start date	01/03/2024
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Assurance provided by author & Chair	<input checked="" type="checkbox"/> Minutes of meeting <input type="checkbox"/> E-mail with Chair's approval
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Quick Reference Guide

This policy and supporting Transitioning in the Workplace procedure will support the Trust in the discharge of its Equality Duty by ensuring that members of staff involved in any aspect of the gender reassignment process have guidance to work with. It will support the staff member involved with the gender reassignment process in understanding the support that is available to them

The purpose of this policy and procedure is to provide guidance to Managers and staff about their role in supporting work colleagues who may be undergoing gender reassignment.

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1. Scope

Merseyside and West Lancashire Teaching Hospital NHS Trust (MWL or the Trust) is committed to promoting equality, diversity, and inclusion in everything it does. Specifically, the Trust is committed to implementing all relevant legislation relating to Trans equality and transitioning in the workplace, including but not limited to the Equality Act 2010 and the Gender Recognition Act 2004 (see Appendix 1: Legal Summary).

This policy sets out

- how the Trust is committed to equality of opportunity for trans people,
- how it will support trans people in employment,
- how it will support trans employees through their transition.

This policy applies to all Trust employees, students, contractors, bank staff, temporary workers, volunteers, and applicants for employment with the Trust, and provides a framework for managers to support Trans staff. Doctors in Training employed by Lead Employer should refer to the equivalent Lead Employer policy.

This policy should be read in conjunction with the 'Transitioning in the Workplace Standard Operating Procedure' which provides more detailed and specific guidance including key terminology, creating a transition support plan, and updating/altering records.

1.1 A note on terminology

The term Trans is used throughout this policy as an umbrella term to describe people whose gender identity is not the same as, or does not sit comfortably with, the sex they were assigned at birth.

Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, trans, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.

These identities may mean a staff member has transitioned, intends to transition, or is in the process of transitioning permanently to their affirmed gender. For some people gender identity may be more fluid. Wherever possible, the Trust policy is to support the employee or potential employee's requirements.

Please note that some definitions can mean different things to different people. It is always best to talk to the person involved to ensure the same understanding. The

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definition is not as important as understanding what support the individual needs to feel comfortable at work.

2. Introduction

The Trust is committed to ensuring that all Trans applicants, employees, and individuals working within the Trust are supported to transition in the workplace, receive equitable treatment and protection from discrimination at work. The Trust believes that trans employees are entitled to be treated with respect and must be free from harassment and discrimination in order to perform their work effectively.

The Trust seeks to provide a supportive environment for Trans staff and to create a culture and environment where Trans staff are able to thrive and are well supported during any process of transition. Trans staff contribute a variety of experience to the organisation and working with the trans community may have a positive impact on organisational priorities and values.

Being able to express your gender is something many people may not think about. However, when this is stifled it can be stressful and harmful for the individual. The Trust approach is to support staff so they can be the best they can be for themselves and because the Trust understands that happier staff lead to better service delivery and patient care. The Trust recognises that each individual's transition is unique and that there is no 'right' way to transition.

The Trust has a zero-tolerance approach to discrimination, harassment or victimisation on the basis of a person's gender identity, including non-binary identities, gender expression or trans status. Any cases will be dealt with in accordance with the Trust's Respect & Dignity at Work Policy and any subsequent actions under the Trust's Disciplinary Policy.

2.1 Meaning of 'Gender Reassignment' and 'Sex'

The Equality Act 2010 sets out which groups are protected from unlawful discrimination, and how these groups (protected characteristics) are defined.

2.1.1 Protected Characteristic of Gender Reassignment

A Trans person has the protected characteristic of Gender Reassignment. For a person to have this characteristic they must be proposing to undergo, is undergoing, or have undergone a process or part of a process to reassign their sex, by changing their physiological, personal, or social attributes of their sex.

There is no requirement to have medical interventions, legally transition, or meet any pre-determined requirements in order for a person to have this characteristic. Any aspect of a

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transition away from a stereotypical man or women, which may include appearance, clothing, behaviour, self-identify, social identity etc is likely to be sufficient for an individual to be considered Trans.

The term 'gender reassignment' has its limitations under the current law, however, the Trust is committed to protecting and respecting all staff regardless of their gender identity or gender expression.

2.1.2 Protected Characteristic of Sex

The term sex is a reference to a person being male/man/boy or being female/woman/girl. The UK legal system does not recognise biological intersex conditions, or non-binary/gender fluid identifies as types of third-sex categories.

At birth a baby is assigned a sex according to their physical presentation (biological sex), which becomes their de facto legal sex. A person's legal sex is used throughout the UK legal system as the basis of legal rights and responsibilities and can only be legally changed through the gender recognition certificate application process. When an individual is issued with the GRC, their legal sex becomes that of their acquired gender e.g. male to female.

2.2 About Transitioning

The Trust recognises that there are three main transition stages for an individual: social transition, medical transition, and legal transition. The social transition stage may include a person changing their name, title, pronouns, and gender identifiers, alongside that person starting to live in their preferred or acquired gender.

Transitioning is a personal process unique to the individual. The Trust recognises that there is no single route a person's transition will take, examples of transition can include:

- Some Trans people change social aspects such as their name, title (Mr, Ms, Mx etc.), pronoun (he, she, they etc.), clothes, hair style, speech and/or body language, and/or any other features of their presentation,
- Some Trans people undergo medical intervention such as taking hormones and/or having surgery,
- Some Trans people change their legal sex using the Gender Recognition Act.

Whether how and at what pace a Trans person transitions is individual to them and is affected by their own particular experiences and life circumstances. The extent and nature of different transitions does not make some people 'more trans' or more 'genuine' or 'serious' than others.

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However, we recognised that Trans people who are deemed to “pass” with others of their sex, experience privileges that those who are perceived as Trans often do not. These include being able to use public toilets safely and being correctly gendered by others verbally.

Trans individuals may also choose to legally change their sex by applying for a Gender Recognition Certificate (GRC). The Trust recognises that the legal transition cannot happen before the social transition, as a person needs to demonstrate that they have lived within their acquired gender for at least two years before their application for a GRC. It is important therefore that the Trust supports Trans individuals through this process by enabling them to use their preferred gender, gender identity, preferred name, and pronouns.

3. Statement of Intent

The aim of this policy and the Transitioning in the Workplace Standard Operating Procedure aims to assist managers in supporting staff who have either transitioned just before joining the Trust, who are transitioning, or who intend to transition whilst employed by the Trust.

Specifically, this policy and associated standard operating procedure aims to:

- Ensure that Trans employees and applicants who are transitioning are treated with fairness and support in their recruitment, employment, and career development.
- Provide management guidance to Trans employees and applicants.
- Detail the appropriate procedure to be followed when a Trans person applies to the Trust after they have transitioned or states that they are planning to transition whilst in the employment of the Trust.
- Explain what support should be provided to people who are transitioning.
- Ensure that employees who are transitioning are included in discussions regarding the impact of their change of gender in the workplace and are involved in developing the appropriate plans to support their transition. This includes communication to wider teams as appropriate.

It is important to note that this policy should be read in conjunction with the Transitioning in the Workplace Standard Operating Procedure.

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4. Definitions

Term	Definition/meaning
Acquired gender	The gender that a person has transitioned to.
Cis	Someone whose gender identity is the same as the sex they were assigned at birth.
Detransition	When a trans person stops or reverses their transition whether by social, legal, or medical means. Some individuals detransition on a temporary basis, and others detransition permanently
Gender expression	Each person's presentation of their gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names, and personal references. A person who does not conform to societal expectations of gender may not, however, identify as trans.
Gender identity	A person's innate sense of their own gender, whether male, female or something else.
Gender reassignment / transition process	Is the personal, social, and sometimes medical process by which a person's gender identity is changed. An individual may be at any stage of this process, but from the moment the decision is made to embark on the transition process, a person is given legal protection from discrimination under the Equality Act 2010.
Gender reassignment, protected characteristic	A protected characteristic under UK equality law; gender reassignment includes people who plan to, who are, or who have changed aspects of their gender identity from that of their birth sex. All trans, transgender, transexual, gender fluid and non-binary identities are included within this characteristic.
Gender Recognition Certificate (GRC)	A certificate which is provided to those who have been successful in their legal application for gender recognition. Nobody is entitled to see or record the details of a GRC, if someone requires proof of an individual's legal sex, they should show them their birth certificate.
Non-binary	An umbrella term for a person who does not identify as only male or only female, may identify as both, or neither and/or fluctuate between genders
Medical Transition	The process of transitioning that may involve medical interventions including hormone replacement therapy (HRT), hair removal/electrolysis, and surgeries.
Social Transition	The process of transitioning may also include telling friends and family, dressing differently, and changing official documents (such as birth certificate, driving license, passport, etc.). This may involve using a different name and pronouns (e.g., she, he, or they).
Pronoun	Words we use to refer to people's gender in conversation - for example, 'he' or 'she'. Some people may prefer others to refer to them in gender neutral language and use pronouns such as they/their and ze/zir.

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Sex, biological	Assigned to a person based on primary sex characteristics (genitalia) and chromosome analysis. Biological sex is used to assign legal sex at birth. Biological sex may differ from a person's legal sex where a GRC has been issued.
Sex, legal	The legal sex of an individual as stated by their birth certificate or other official documents. A person's legal sex can be changed via the GRC process.
Sex, protected characteristic	A protected characteristic under UK equality law; sex is defined as being either male/man/boy or female/woman/girl. A person's sex is derived from their legal sex as recorded on their birth certificate or other official documents.
Trans or Transgender	A person whose gender identity differs from their sex assigned at birth. A Trans person is a person with the protected characteristic of gender reassignment.
Transition	The steps a trans person may take to live in the gender with which they identify. Each person's transition will involve different things. For some, this involves medical procedures, such as hormone therapy and surgeries, but not all trans people want or can have this. Transitioning might also involve telling friends and family, dressing differently and changing official documents.

5. Duties, accountabilities, and responsibilities

5.1 Chief Executive

The Chief Executive has overall accountability for the strategic and operational management of the Trust including and ensuring that this policy complies with all legal, statutory, and good practice guidance requirements and is implemented effectively and efficiently.

5.2 Director of Human Resources

The Director of Human Resources has Board level accountability for ensuring that the HR aspects of the policy apply to all levels within the organisation and that the policy is followed fairly and consistently.

5.3 Human Resources

HR is accountable for ensuring that line managers are adequately advised and supported to ensure the practical application of this policy and implementation of the transition action plan.

HR are responsible for:

- providing advice and support to Trans employees on their transition in the workplace,

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- advising and support managers to support trans employees,
- provide clear and accessible administrative HR processes relating to transition,
- promote and support a workplace free from discrimination and harassment,
- ensuring that this policy and procedure are observed during recruitment and at every stage of an employee's employment,
- maintaining confidentiality, including securing electronic and paper documents and files.

5.4 Line Managers

All managers are responsible for ensuring the practical application of this policy and procedure. Managers should be aware that they will be expected to positively promote high professional standards, where everybody is treated with dignity and respect in line with ACE behavioural standards.

Line managers are responsible for:

- Implement the policy within their designated and support staff who are transitioning using the Transitioning in the Workplace Procedure,
- provide ongoing support for employee's transition plan,
- maintaining employee's confidentiality,
- challenging staff who discriminate and ensuring that the relevant procedures are followed,
- supporting their staff to challenge discrimination from patients or the public.
- ensuring that transgender people are addressed and treated as the gender they identify with
- take all reasonable steps to prevent bullying and harassment at work
- ensuring that all staff are aware of this policy and attend any relevant training.

5.5 Trans Staff

Trans employees are responsible for:

- Leading the transitioning at work process at all times so that it meets their needs as best as possible, with support from their line manager and the Trust,
- Engaging with the Trust to agree and implement a Transition Support Plan, where the employee has requested support,
- To follow all Trust policies and processes relating to transition, including updating personal/IT records, and absence from work processes; and to update external agencies in a timely manner,
- Engaging with the agreed named manager and/or representative around the practical aspects and support needed when transitioning in the workplace.

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- Reporting any instances of harassment, victimisation, or discrimination.

5.6 Staff

All staff are responsible for:

- Complying with the Trusts anti-discrimination policies, and treating Trans people with dignity and respect,
- Respecting and using a Trans person name, gender identify and pronouns when they have been communicated to them,
- Maintaining Trans employee’s confidentiality,
- Reporting incidents of bullying, harassment and discrimination.

6. Types of Transition

The Trust recognises that every person’s transition is unique and individual to them. The Trust is committed to supporting each individual in their decisions and respecting their dignity.

For the purposes of this policy, there are broadly 4 types of transition to be aware of:

6.1 Non-Binary/Gender Fluid Transition

This is usually when a person does not identify with being male or female, and usually has changed some aspects of their gender identity/expression, such as their appearance or name. They may or may not have some form of gender confirming medical procedures. The individual remains legally the sex that they were assigned at birth. The individual may use gender neutral titles (Mx) and pronouns (They/Them) or a mixture based on their legal sex and gender identity.

6.2 Transition with no Gender Recognition Certificate

This is when a person has socially transitioned into their acquired gender, including changing their name and appearance, and may or may not undergo some forms of gender confirming medical procedures. The individual remains legally the sex that they were assigned at birth but is living in their acquired gender (female to man (F2M) or male to female (M2F)). The individual will use titles and pronouns that align with their gender identity/expression.

6.3 Transition with a Gender Recognition Certificate

This is when a person has lived in their acquired gender for a minimum of 2 years, has applied for and been granted a Gender Recognition Certificate (GRC). Where a GRC has been issued, the individual’s sex is legally changed. This creates specific legal

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protections and rights to Trans individuals with a GRC including the right to have all previous records of their name and sex to be changed, and specific GDPR disclosure protections. The individual will usually use titles and pronouns that align with their acquired legal sex.

6.4 Detransition

This is when a person who had previously transitioned, either identifying as Non-Binary/Gender Fluid/Trans Man/ Trans Women chooses to return to the gender identity they had before their transition.

These descriptions are provided as a general guide. How a trans person identifies may change as their transition progresses as well as their own personal understanding of their identify.

The applicability of this policy will need to be flexible to take account of the individuals own identity and transition journey.

7. Recruitment & Selection

The Trust welcomes applications from all Trans individuals for roles at the Trust. The Trust recognises that for most roles the gender identify of an applicant is irrelevant, and candidates will be assessed against the job description and specification.

Where an applicant requests support during the application process that relates to their transition status, the recruitment manager and/or Human Resources will take all appropriate steps to support the applicant within the process.

The Trust is entitled to use the Occupational Requirements and Positive Action anti-discrimination exemptions, as well as develop Single Sex Services, Separate Sex Services in accordance with the Equality Act 2010. In these circumstances the Trust may limit the eligibility of a role or service based on a person being male, female, trans, or not trans. Where a legal exemption is applied the Trust will do so in accordance with the relevant provision.

See Appendix 2: Anti-discrimination exemptions for further details.

For further guidance on trans inclusive recruitment and selection processes, including applicant details, references, transition support, work permits and disclosure and barring services consideration, please refer to the Transitioning in the Workplace SOP.

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8. Supporting an employee's transition in the workplace

If an employee is intending to transition at work, the Trust would encourage them to have a conversation with their line manager and/or a HR Business Partner who will be able to support the employee in the process.

A Transitional Support Plan template is provided through which the employee, the line manager, and Human Resources can discuss and agree what type of support is needed, how and when the employee intends to transition, and the responsibilities of each party.

The Line Manager, with support from the HR Business Partner must ensure that confidentiality is contained and only disclosure information with the agreement of the employee. They should aim to make this process as smooth as possible, being aware that it can be an extremely difficult step for someone to approach their manager about transitioning.

The transition process must be led by the individual concerned, and the Trust will be directed by them, as much as possible.

Trans employees, Line Managers and HR Business Partners should refer to the Transitioning in the Workplace SOP for further details.

9. Discrimination & Harassment

Trans employees are protected from experiencing unlawful discrimination, harassment and victimisation in the workplace, and when accessing goods and services on the grounds of the protected characteristic of gender reassignment and sex.

The Trust is committed to taking action to prevent, reduce and respond to incidents of gender reassignment or transphobic based discrimination and harassment.

Trans employees are legally protected from:

- Direct Discrimination,
- Indirect Discrimination,
- Harassment because they are trans,
- Sexual Harassment,
- Detrimental treatment because they have submitted to or rejected sexual harassment,
- Detrimental treatment because they have submitted to or rejected harassment because they are Trans,
- Victimisation because they have raised a complaint of trans discrimination

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Where a Trans employee is subject to discriminatory treatment, harassment, or victimisation they should report it to their line manager, and/or follow the process set out in the Resolution & Grievance Policy, the Respect and Dignity at Work Policy, or the Sexual Misconduct Policy depending on the nature of the incident.

Where an employee is found to have unlawfully discriminated or harassed a Trans person, they may be subject to disciplinary measures.

See Appendix 1: Legal Summary for further details.

10. Lawful exemptions to anti-discrimination provisions

The Trust is committed to implementing and adhering to the Equality Act 2010, the Gender Recognition Act 2004 and all relevant legislation relating to gender reassignment and sex-based rights and responsibilities.

The Trust recognises that it has a duty, in specified situations, to balance the rights of Trans individuals with those of men and women, or religious adherence, where a legal duty or exemption applies.

Furthermore, the Trust recognises that it has the right to use mechanisms within the Equality Act 2010 to limit a benefit or policy to a specific group based on their sex, gender reassignment status or religious belief or non-belief. In situations where the Trust employs one of these exemptions from anti-discriminatory duties, it will do so in accordance with the relevant conditions set out within the law.

The exemptions to the general anti-discrimination provisions are:

- Occupational requirement,
- Positive Action,
- Position Action in recruitment and promotion,
- Services for men, women, or Trans individuals,
- Single Sex Services,
- Sport exemptions.

See Appendix 2: Anti-discrimination exemptions and the Transitioning in the Workplace SOP for further details.

11. Transitioning in the Workplace Procedure

All further details for employees, line managers and departments on the processes to support an employee transitioning in the working our set out in the Transitioning in the Workplace Standard Operating Procedure and any relevant accompanying guidance.

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12. Training

What aspect/s of this policy will require staff training?	Which staff groups require this training?	Is this training covered in the Trust's Statutory & Mandatory Training Policy?	If no, how will the training be delivered?	Who will deliver the training?	How often will staff require training	Who will ensure and monitor that staff have this training
Trans Awareness	Line Managers	No	Guidance 1-2-1 advice	EDI (HR), and/or people with lived experiences	n/a	EDI (HR)

13. Monitoring Compliance

13.1 Key Performance Indicators (KPIs) of the Policy

No	Key Performance Indicators (KPIs) Expected Outcomes
1.	Compliance with policy by stakeholders
2.	Reviewing staff grievances about Transgender support
3.	Reviewing staff grievances re: discrimination and harassment

13.2 Performance Management of the Policy

Minimum Requirement to be Monitored	Lead(s)	Tool	Frequency	Reporting Arrangements	Lead(s) for acting on Recommendations
Complaints	DoHR	Cases	Annual	People Performance Council	Director of HR
Number of Trans Support Plans supported by HR	DoHR	Cases	Annual	People Performance Council	Director of HR

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14. References/Bibliography/Relevant Legislation/National Guidelines

No	Reference
1.	Equality Act 2010
2.	Gender Recognition Act 2004
3.	Human Rights Act 1998
4.	Employment Rights Act 1996
5.	EHRC Equality Act 2010: Employment Statutory Code of Practice
6.	EHRC, Separate and single-sex service providers: a guide on the Equality Act sex and gender reassignment exceptions
7.	The Workplace (Health, Safety and Welfare) Regulations 1992, s.20

15. Related Trust Documents

No	Related Document
1.	The Equality and Human Rights Policy
2.	Grievance Policy
3.	Respect & Dignity at Work Policy
4.	Attendance Management Policy & Procedure
5.	Raising Concerns Policy & Procedure
6.	Recruitment Selection Policy
7.	Supporting Staff Involved in a serious Incident, Complaint, or Claim Policy
8.	Special Leave Policy
9.	Management of Incidents of Unacceptable Behaviour by Patients, Visitors and Members of the Public

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16. Equality Analysis Screening Tool

The EIA screening must be carried out on all policies, procedures, organisational changes, service changes, cost improvement programmes and transformation projects at the earliest stage in the planning process. Where the screening identifies that a full EIA needs to be completed, please use the full EIA template.

The completed EIA screening form must be attached to all procedural documents prior to their submission to the appropriate approving body. A separate copy of the assessment must be forwarded to the Head of Patient Inclusion and Experience for monitoring purposes via the following email, cheryl.farmer@sthk.nhs.uk. If the assessment is related to workforce a copy should be sent to the Head of Equality, Diversity and Inclusion (Workforce) equality&diversity@sthk.nhs.uk.

If this screening assessment indicates that discrimination could potentially be introduced then seek advice from either the Head of Patient Inclusion and Experience or Head of Equality, Diversity (Workforce) and Inclusion.

A full equality impact assessment must be considered on any cost improvement schemes, organisational changes or service changes that could have an impact on patients or staff.

Title of function	Trans Staff Support Policy
Brief description of function to be assessed	The policy aims to set out the Trusts approach to supporting Tran staff in the workplace, specifically those seeking support to transition.
Date of assessment	October 2024
Lead Executive Director	Malise Szpakowska
Name of assessor	Darren Mooney
Job title of assessor	Head of EDI (Workforce)

Equality, Diversity & Inclusion

Does the policy/proposal:

- 1) Have the potential to or will in practice, discriminate against equality groups
- 2) Promote equality of opportunity, or foster good relations between equality groups?
- 3) Where there is potential unlawful discrimination, is this justifiable?

	Negative Impact	Positive Impact	Justification/ evidence and data source
Age	No	No	n/a
Disability	No	No	n/a
Gender reassignment	Yes - Justifiable	Yes	The policy aims to support trans employees in the workplace in

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	Negative Impact	Positive Impact	Justification/ evidence and data source
			accordance with EA 2010 and GRC 2004. Support may be limited by legal exemptions based on sex and GR
Pregnancy or maternity	No	No	n/a
Race	Yes	No	There may be instances where overseas trans staff can not transition the same way as UK staff due to legal differences, and visa / immigration controls re: name etc
Religion or belief	Yes	No	There may be instances where the perceived rights of religious groups in particular Muslim women to use single sex spaces is in conflict with the policy. The policy aims to balance these rights, and use exemptions where applicable
Sex	Yes - Justifiable	No	There may be instances where the perceived rights of men/women to use single sex spaces is in conflict with the policy. The policy aims to balance these rights and use exemptions where applicable.
Sexual orientation	No	No	n/a

Human Rights

Is the policy/proposal infringing on the Human Rights of individuals or groups?

	Negative Impact	Positive Impact	Justification/ evidence and data source
Right to life	No	No	
Right to be free from inhumane or degrading treatment	No	Yes	Policy to support Trans individuals
Right to Liberty/security	No	Yes	ditto
Right to privacy/family life, home and correspondence	No	Yes	ditto
Right to freedom of Thought/conscience	No	Yes	ditto
Right to Freedom of expression	No	Yes	ditto
Right to a fair trial	No	No	

Health Inequalities

Is the policy/proposal addressing health inequalities and are there potential or actual negative impact on health inequality groups, or positive impacts? Where there is potential unlawful impacts is this justifiable.

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	Negative Impact	Positive Impact	Justification/ evidence and data source
Deprived Populations	No	No	Employee Policy
Inclusion health groups	No	No	Employee Policy
5 child clinical areas	No	No	Employee Policy
5 adult clinical areas	No	No	Employee Policy

Outcome

After completing all of the above sections, please review the responses and consider the outcome.

Is a full EIA required?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Please include rationale:

Sign off

Name of approving manager	Darren Mooney
Job title of approving manager	Head of EDI (Workforce)
Date approved	

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17. Data Protection Impact Assessment Screening Tool

	Yes	No	Unsure	Comments - Document initial comments on the issue and the privacy impacts or clarification why it is not an issue
Is the information about individuals likely to raise privacy concerns or expectations e.g. health records, criminal records or other information people would consider particularly private?	X			Trans status information has protected status under GDPR. Consent must be provided by the employee for disclosure of any information.
Will the procedural document lead to the collection of new information about individuals?	X			A Transition Support Plan or equivalent agreement will be made with the employee to facilitate their transition which may require Trust records to be updated and staff notified.
Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?		X		
Will the implementation of the procedural document require you to contact individuals in ways which they may find intrusive?			X	
Will the information about individuals be disclosed to organisations or people who have not previously had routine access to the information?		X		
Does the procedural document involve you using new technology which might be perceived as being intrusive? e.g. biometrics or facial recognition		X		
Will the procedural document result in you making decisions or taking action against individuals in ways which can have a significant impact on them?		X		
Will the implementation of the procedural document compel individuals to provide information about themselves?	X			Yes, the aim of the process is to support trans staff to transition, which will be instigated by the employee.

Sign off if no requirement to continue with Data Protection Impact Assessment: Confirmation that the responses to the above questions are all NO and therefore there is no requirement to continue with the Data Protection Impact Assessment

Policy author Darren Mooney Date 1/10/2024

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18. Appendix 1: Legal Summary

The Trust is committed to implementing and adhering to the Equality Act 2010, the Gender Recognition Act 2004 and all relevant legislation relating to gender reassignment and sex-based rights and responsibilities.

The Trust recognises that it has a duty, in specified situations, to balance the rights of Trans individuals with those of men and women, or religious adherence, where a legal duty or exemption applies.

Furthermore, the Trust recognises that it has the right to use mechanisms within the Equality Act 2010 to limit a benefit or policy to a specific group based on their sex, gender reassignment status or religious belief or non-belief. In situations where the Trust employs one of these exemptions from anti-discriminatory duties, it will do so in accordance with the relevant conditions set out within the law.

In this section, we outline what the principal duties and exemptions are to ensure that all members of the Trust are provided with a clear understanding of what these are, and when these will apply.

18.1 Data Protection Act 2018 and GDPR

The Data Protection Act 2018 controls how information can be collected, held and used. This protects a staff member's gender history. An individual's trans status is classed as 'sensitive personal data' under the General Data Protection Regulation (GDPR), and therefore must also be collected, recorded, and shared strictly in line with the GDPR's principles.

18.2 Gender Recognition Act 2004

The UK Gender Recognition Act (GRA) enables people aged over eighteen to gain full legal recognition for their affirmed gender. To make an application for a Gender Recognition Certificate (GRC), a person needs to show they have been living and working in that gender for at least two years.

Applications are considered by the Gender Recognition Panel. A GRC means that legally the person will have all the rights and responsibilities associated with that gender. A Trans person is not required to apply for a GRC, and many Trans people will not have them.

Employment rights do not depend on whether a person has a GRC. It is illegal to ask for a person's GRC and it should never be a pre-condition for transitioning at work. It is also illegal to disclose an employee's trans status without explicit and expressed consent from the Trans employee.

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The GRA gives anyone applying for or holding a GRC a particular privacy right. 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’ include employment, trade union representation or supply of business or professional services. In addition to it being a criminal offence, any situation where a staff member is found to be passing information or disclosing someone’s trans status without their consent will be treated as harassment. This is regardless of whether the person has a GRC or not.

18.3 Equality Act 2010

The Equality Act 2010 protects against discrimination because of gender reassignment in employment and service delivery. It bans direct and indirect discrimination and victimisation.

18.3.1 Definition of the protected characteristic of ‘Gender Reassignment’

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.

A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

In relation to the protected characteristic of gender reassignment—

- a reference to a person who has a particular protected characteristic is a reference to a transsexual person;
- a reference to persons who share a protected characteristic is a reference to transsexual persons.

NB: The term transsexual is generally seen as an outdated, replaced with Trans or Transgender.

18.3.2 Definition of the protected characteristic of ‘Sex

In relation to the protected characteristic of sex:

- a reference to a person who has a particular protected characteristic is a reference to a man or to a woman.

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- a reference to persons who share a protected characteristic is a reference to persons of the same sex.

18.3.3 Discrimination

Direct discrimination is when a Trans person experiences some form of detriment in work because they are Trans, when compared to people who are not Trans. This could include:

- Refusal to appoint or promote someone,
- Refusal to provide developmental opportunities, training, and support,
- Applying staff benefits rules differently, such as annual leave.

Indirect discrimination is when a Trans person experiences a workplace disadvantage, which is caused by how the Trusts policies, procedures, processes and practices are designed and implemented, and where this disadvantage is related to the protected characteristic of gender reassignment, and where this cannot be objectively justified as being required.

This could include:

- How leave and sickness absence policies are designed and applied to Trans people during their transition process,
- Practices that exclude Trans people from work related events and activities,
- Systems that disclose a Trans person’s personal details where consent has not been given.

A person can also experience Direct Discrimination because they are perceived by the perpetrator to be Trans, or because a person is associated with Trans people.

18.3.4 Harassment

18.3.4.1 Harassment because of gender reassignment or sex

Harassment related to a person’s gender reassignment or sex is defined as unwanted conduct which has the purpose or effect of:

- Violating a person’s dignity, or
- Creating an intimidating, hostile, degrading, humiliating or offence environment,

Examples of gender reassignment harassment could include:

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- derogatory remarks, “jokes”, innuendo or gossip, persistent use of incorrect name/pronoun,
- threats of disclosing the gender history of an individual,
- expressing or acting on stereotypical assumptions,
- display of or electronic transmission of offensive materials,
- exclusion from social activities because a person is Trans,
- any refusal by a work colleague to work alongside a trans employee on grounds relating to their trans status,
- intrusive questioning of the person undergoing or who have transitioned.

A person can also experience Harassment because they are perceived by the perpetrator to be Trans, or because a person is associated with Trans people

18.3.4.2 Sexual Harassment

Sexual Harassment is defined as unwanted conduct of a sexual nature, which has the purpose or effect of:

- Violating a person’s dignity, or,
- Creating an intimidating, hostile, degrading, humiliating or offence environment,

Behaviour of a sexual nature have its everyday meaning and would include:

- Jokes about a trans person’s appearance,
- Offensive and lewd gestures,
- Unwanted sexual advances,
- Intrusive questions about a trans person sex life,
- inappropriate touching,
- sexual assault.

The Trust as an employer, have a legal duty to take reasonable steps to prevent sexual harassment of its employees in the course of their employment.

18.3.4.3 Harassment because of a rejection or submission

A third type of harassment is when a person experiences unwanted conduct that amounts to harassment on the grounds of a person’s sex, or gender reassignment; or sexual harassment; and because the person has rejected or submitted to that conduct, they then are subject to less favourably treatment, which they would not have experienced if they had not rejected or submitted to the conduct.

A detriment has a wide meaning and could include being ostracised, unreasonable criticised or micromanaged, threats to job security or chance of progression etc.

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18.3.5 Victimisation

Victimisation is when a Trans person exercises their legal rights and protections to transition in the workplace, to request support to transition, or make a complaint about Trans related discrimination or do anything else they are legally entitled to do so; and as a result, experience a workplace detriment, then this would be victimisation. In this case a detriment could include:

- Being denied similar opportunities as others including appointment, promotion, training and development.
- Being subject to any form of bullying and harassment behaviour.
- If an employee supports a trans colleague in their discrimination complaint and is subsequently treated unfavourably by the employer or other colleagues through bullying or harassment behaviour.

18.3.6 Hate crime

Hate crimes are criminal offences motivated by the victim's trans status. A criminal offense includes threats of physical violence to a person or property; actual physical violence/assault; damage to property; theft; sexual assault etc.

If an employee experiences a hate crime in the workplace they should report it in line with the Trust grievance/freedom to speak up procedures. Where the incident occurs in a public space/outside of work, hate crimes should be reported to the police.

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19. Appendix 2: Anti-discrimination exemptions

In this section we outline the different legal exemptions that may apply in the workplace that may affect a Trans employee or an employee who intends to transition.

Specific guidance on how the Trust will respond in situations where a Trans employee may be disadvantaged in the workplace because of the application of any of these lawful provisions is further expanded within the Transitioning in the Workplace SOP.

The anti-discrimination exemptions categories outlined are:

- Occupational requirement,
- Positive Action,
- Position Action in recruitment and promotion
- Services for men, women, or Trans individuals,
- Single Sex Services,
- Sport exemptions.

19.1.1 Occupational Requirement

The Trust is permitted to limit a job to a person with a specific protected characteristic, that being the person is male, is female, is Trans (this could include specific Trans identifies) or state that a job is explicitly not open to trans people¹.

This is permitted where the Trust can show that due to the nature or context of the work, that it is an occupational requirement that the person has this characteristic.

To do so, the Trust must demonstrate that this requirement is a proportionate means of achieving a legitimate aim. This applies so

- The recruitment and selection process of employees and contract workers,
- Opportunities for promotion, transfer, training or receiving related benefits,

Where the Trust uses this provision to limit a post based on this criterion, it will be done so only in accordance with this provision. Where such limitations are compliant, this will not be considered discrimination.

19.1.2 Positive Action

¹ [Sch 9, Part 1, s.1-4](#)

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Positive Action is an umbrella term used to refer to actions taken by the Trust to advance equality of opportunity for a specific protected characteristic, when the Trust reasonable thinks that there is a need to:

- remove or minimise disadvantages suffered by a group, where the disadvantage is connected to being a member of that group,
- take steps to meet the needs of people that are different from the needs of people who are from that group,
- encourage people to participate in public life or in any other activity in which participation by that group is disproportionately low (underrepresentation).

Therefore, the Trust is permitted to limit the eligibility of positive action initiatives only to the group that it is aimed at, when the initiative is itself legally compliant with the regulations.

The Trust recognises, that where positive action is lawful and can be objectively justified, it has the right to take action which is open/targeted only at men, women, or trans people (including specific trans identifies), to the exclusion of others.

19.1.3 Positive Action in recruitment and promotion

In a recruitment or promotion process, where the Trust reasonably believes that there is an underrepresentation of men, women, or trans people in the workplace, it can legally choose the candidate who is from the underrepresented group for the post².

This provision only applies where it can be shown that a specific group suffers a disadvantage, or they are disproportionately underrepresented in the workforce; and the final choice is between the final two equally qualified candidates and where there is no other way to choose between them. *This only applies to the final choice and cannot be used at any other stage, including shortlisting or interview selection process.*

Where the Trust opts to use this provision and the use of that provision meets the justification criteria, this will not be considered discrimination.

19.1.4 Services for Men, or Women, or Trans individuals

The Trust is permitted to provide services and public functions that are limited to people who are women, who are men, or who are trans, where it can show that to do so is objectively justifiable and that to provide the service to others is impractical³

² Equality Act 2020, Chapter 2, Section 159.

³ Equality Act 2010, Sch 3, Part 7, s.30

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Where the Trust provides a service and where access is restricted to that service based on sex or gender reassignment this will be done so only in accordance with this provision. Where such limitations are compliant, this will not be considered discriminatory.

A separate-sex service is one which is provided to both sexes, but separately or differently; and includes providing separate services in a different way for each sex.

- Only people of that sex need the service - *if women of a particular religion or belief will not use the local swimming pool at the same time as men, women-only swimming sessions could be provided as well as mainly mixed sessions.*
- Providing the service jointly to both sexes would not be sufficiently effective - *a women-only support unit for women who have experienced domestic or sexual violence can be set up, even if there is no parallel men-only unit because of insufficient demand.*
- The service is provided at a hospital or other place, where users need special care, supervision or attention - *single-sex wards in hospitals and nursing homes.*
- The level of need for the services makes it not reasonably practicable to provide separate services for each sex.
- The service is likely to be used by more than one person at the same time and a woman might reasonably object to the presence of a man (or vice versa) - separate male and female changing rooms.
- A person might reasonably object to the service user being of the opposite sex because the service involves physical contact. - *Example: any service involving intimate personal health or hygiene.*

19.1.4.1 Single Sex Services

The Trust is permitted to provide service and public functions that are:

- separate services for men and women,
- services that are only for women, or for men,

where it can be shown that to do so is a proportionate means of achieving a legitimate aim. Where it can show there is a legitimate aim, it can restrict access to these services to men and/or women only, and/or restrict access because a person is Trans⁴.

Where the Trust provides separate or single sex service, and limitations to access that service is based on sex or gender reassignment, this will be done so only in accordance with this provision. Where such limitations are compliant, this will not be considered discrimination.

⁴ Equality Act 2010, Sch 3, Part 7, s.26-28

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19.1.5 Sport - Exemptions

The Trust is permitted to put restrictions on the eligibility to participation as a competitor in a gender-affected sport activity, where doing so is a requirement to ensure a fair competition, or for the safety of the competitors. Restrictions can be based on whether a person is male, female, or trans⁵.

A gender-affected activity is any sport, game or activity of a competitive nature where the physical strength, stamina or physique of an average person of one sex would put them at a disadvantage compared to average person of the other sex as competitors in events involving the activity.

Where the Trust uses this provision to restrict access to a sporting activity based on a person's sex or gender reassignment, it will do so in compliance with this provision. Where such limitations are compliant, this will not be considered discriminatory.

⁵ Equality Act 2010, s.195

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