Worcestershire Acute Hospitals NHS Trust

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Supporting Colleagues Who are Transgender, Non-Binary or Gender Non-Conforming Policy

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What this Policy Covers

Transgender people have very specific protection against discrimination within the current Gender Recognition Act 2014. This protects a transgender person who intends to undergo, is undergoing or has undergone gender reassignment. In addition, good NHS practice dictates clinical responses be patient-centred, respectful and flexible towards all transgender people, including those who do not meet these criteria but who live continuously or temporarily in their confirmed gender role.

Worcestershire Acute Hospitals NHS Trust are committed to providing an inclusive environment for its LGBTQ+ colleagues. This aligns with our strategic objective of 'Best People'. This policy provides a guide for all colleagues, but in particular managers, on how to support a colleague who is transgender, non-binary or gender non-confirming.

For patient guidance, please refer to our Supporting Patients Who Are Transgender, Non-Binary or Gender Non-Conforming Policy.

Introduction

Transgender (trans) or non-binary people are people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. A person's gender identity is self-defining, does not always involve a medical process and is different to their sexual orientation.

The number of people who are identifiable as falling under the umbrella term "gender diverse" has grown rapidly over recent years. With this increase of people who identify as transgender, non-binary or gender non-conforming it is important that we as a Trust support our patients and colleagues, treating them with the same care and dignity we afford every other patient and colleague.

Worcestershire Acute Hospitals NHS Trust is an organisation that values diversity and promotes equality regardless of age, disability, ethnic origin, sex, sexual orientation, gender identity, race, religion, marriage or civil partnership, pregnancy or maternity. Discrimination against a transgender, non-binary or gender non-conforming person must be challenged, whether the discrimination stems from colleagues, patients or the public and is covered in our Behavioural Charter.

The Equality Act 2010 states that "it is unlawful to discriminate against people who: 'are proposing to undergo, are undergoing or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex have the protected characteristic of gender reassignment."

This policy sets out the expectations for Trust colleagues, particularly managers, when supporting trans, non-binary or gender non-conforming colleagues. Managers are expected to provide support to colleagues who are considering transitioning, transitioning or have transitioned whilst employed by the Trust.

The successful support and management of a colleague's transition depends crucially on taking account of the individual's views on how to proceed. Transition is a personal process (rather than a medical process), which involves a person expressing their gender in any way that differs from the physical sex they were assigned at birth. This is a unique and personal

process; it may include undergoing medical procedures or may include choosing to dress in a different way as part of the personal process of change. Gender reassignment must be treated with respect and dignity by managers and teams.

Scope

This policy aims to provide all colleagues (both temporary and substantive), as well as contractors, agency and bank colleagues with guidance and advice on good practice when supporting a colleague who is transgender, non-binary or gender non-conforming.

Definitions

Please see Appendix 1 - Definitions and Abbreviations

Policy in Practice

Responsibilities

The Board of Directors – hold overall responsibility for ensuring an up to date policy is in place that is fit for purpose and based on best practice. The Board is required to ensure that the Trust treats all people equally.

Executive Lead, Chief Nursing Officer – will act as the overall sponsor for this policy and will oversee that compliance with this policy and the required standards are monitored and reported, and best practice is achieved and shared.

Divisional Directors – are responsible for ensuring there is local compliance with the policy, and that colleagues have the necessary knowledge and access to the relevant training to be able to work well with trans and non-binary people and to care for trans, non-binary and gender non-conforming patients with dignity.

Matrons and Service Managers
Are responsible for:

- Ensuring the policy is implemented throughout local services.
- Ensuring all colleagues are made aware of and have read the policy.
- Identifying any additional training and support needs required to enable their teams to support colleagues who are trans, non-binary and gender non-conforming people and highlight this to the
  Trust's Equality & Diversity lead.
- Will seek feedback from trans, non-binary and gender non-conforming people on their experience of transitioning and ensure periodic monitoring of the working experience of trans, non-binary and gender non-conforming colleagues at our Trust.

All colleagues
Will follow good practice and guidelines set out within this policy supporting trans, non-binary and gender non-conforming people in the workplace.

Legal Information

The basic legislative framework makes it unlawful to discriminate where either someone is perceived to be or is:

- intending to undergo gender reassignment.
- undergoing gender reassignment.
- or has undergone gender reassignment in the past.

Please note, there is a lack of clarity around non-binary identities within the current legal framework and that best practice is to treat all individuals, including non-binary people as you would other people with protected characteristics.

The Equality Act 2010 (EqA)

2010's Equality Act simplifies and harmonises protection offered to people from discrimination, harassment and victimisation. In addition, public sector organisations also have the duty to promote equality and good relations between all protected characteristics.
Under EqA, trans people should expect employers, colleagues, patients, service users and contracted suppliers to refrain from any form of bullying, harassment, victimisation or discriminatory behaviour.
The protection offered by the EqA begins when a person decides to undergo their transition process, and continues to protect them throughout their lives, no matter what their transition looks like.

Gender Recognition Act 2004 (GRA)

The GRA covers how trans people can have their identity legally recognised, which follows from being given a full Gender Recognition Certificate (GRC) following review by a Gender Recognition Panel.
Once a GRC has been issued, there are increased privacy requirements for documentation/records that reveal a previous gender status which should never be disclosed without the person's prior consent.

A GRC is not needed in order to change one's name, pronouns, or gender of presentation at work/or accessing a public service. Currently a trans person must live in their assigned gender for 2 years in order to apply for a GRC and asking to see one is inappropriate. Appropriate identification can be provided from driving licences or other official documents.

Under the current system the majority of trans people will not choose to pursue a GRC, and many will never obtain one. If a person chooses not to undergo any medical intervention or gain a GRC, they are still entitled to dignity and respect regardless of how their transition looks.

Human Rights Act 1998

The principles of the Human Rights Act are woven into the GRA, and the Act requires trans people to be treated with dignity and respect with regard to their need for privacy and all other principles within the Act.

Data Protection

Under the General Data Protection Regulation of 2018, trans status and details relating to a colleague's gender transition falls within a special category of 'personal data'. This means that such data can only be processed in certain limited circumstances, such as where the colleague gives explicit consent or where it is necessary for carrying out rights and obligations under employment law.

Advice for Managers to support colleagues

It is important to remember that each trans and non-binary person's journey is different and it is imperative that managers discuss with the individuals about how they want to approach their transition. You should take the lead from the needs of the trans or non-binary colleague. Please use the following advice as a guide but the key is to communicate openly and honestly with your colleague. Further support can be gained from the Chair of the LGBTQ+ Network, HR or Trade Union representatives.

Managers are responsible for ensuring a culture of inclusion with their department. This can be achieved by:

- Ensuring that all colleagues are aware of these guidelines and have the opportunity to attend relevant training.
- Challenging discrimination from patients, the public and colleagues, in line with the Behavioural Charter.
- Agreeing a support plan with the colleague who is transitioning and providing support accessing appropriate support where necessary.
- Ensuring that the colleague is addressed and treated as their affirmed gender, including using their new name and pronouns, by all colleagues and patients. When someone is referred to with the wrong pronoun, it can make them feel disrespected, invalidated, dismissed, devalued, triggered, alienated, or often all of these things. If in doubt, ask the person how they would like to be addressed and respond accordingly.

Developing a support plan to support a colleague who is transitioning

Open, honest and sensitive discussions are recommended between the manager and the colleague to help identify reasonable and practical steps to help the colleague during their transition. The template in Appendix 2 should be used as a guide. Please remember to keep these strictly confidential and in a secure location.

The support plan should include:

- The anticipated point or phase of change of name, personal details, and social gender.
- A plan around communicating the changes needs to be jointly developed and agreed between the colleague and line manager. This should include who will be informed, when they will be informed and who will deliver that communication. Support, advice, and guidance is available from the HR Team, Trade Union Representatives as well as the LGBTQ+ Staff Network.
- Date of starting to work in their affirmed gender / non-binary identity needs to be jointly agreed
- Colleagues who are professionally registered are advised to contact their professional bodies to find out whether there are any specific requirements in terms of name changes etc. Where the Trust has to keep evidence of professional status or qualifications, it should be discussed with the colleague how this information will be retained so as not to compromise or breach disclosure of protected information. In some instances, certificates can be re-issued with the new chosen name of the trans or non-binary person.
- Identify if a change in uniform will be required and agree how this will be facilitated – please see appendix 2.
- Agree the point when facilities change for the colleague such as toilets, changing rooms and showers in their correct gender – please see appendix 2.

- Think about if additional specific training or information on transgender issues is required and if so, who could attend, to best support the colleague and to ensure no discrimination occurs.
- Discuss if the change of gender identity may affect the job role i.e., does the role have a "genuine occupational requirement" to be a particular gender.
- Discuss any colleague concerns about whether they wish to stay in their current position or if they would like to discuss options for redeployment. Decisions regarding potential redeployment must only be made following full discussion and consideration of the colleague concerned. There is lots of support available for colleagues to access when considering redeployment, including line managers, senior leaders, professional leads, HR and Trade Union representatives. Additional opportunities to talk to people independent of the workplace also exist, i.e., confidential counselling and the LGBTQ+ Staff Network.
- Discuss any time off required for any medical treatment, you should allow flexibility, plan for the absence, and cover appropriately. Gender- affirming medical treatment must not be regarded as cosmetic or elective and colleagues must not be subjected to any disadvantage for taking time off to transition or undergo gender-affirming medical treatment including surgery.
- The Trust's Communications Team will provide any support that may be required to address any external media attention, working closely with the colleague and their line manager. Again, this will be done sensitively, and the colleague will be given the full support of the Trust.
- After a person has transitioned at work it is not appropriate to keep records within the personal file. Any Supporting information relating to an individual's transition 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 managers. These documents should be locked within the personnel file in a sealed envelope with clear instructions on the front of the authorised managers and roles. If opened by the authorised managers this must be recorded on the envelope with the date and reason why, then resealed.

Time off work

The Trust acknowledges that time off work will be needed for appointments and potentially for surgical procedures. Again, treatment times and options vary and while some procedures may require less than two weeks absence from work, others may take much longer. Sometimes medical transition can take over 5 years. For others transitioning is a life-long process. For this reason, managers need to keep in touch and consult with the individual.

The Trust will support any person who undergoes any surgical or medical treatment in relation to transitioning, including reference to the Special Leave Policy, Flexible Working Policy and Annual Leave Policy. Time off for medical appointments will be supported by the line manager being as flexible as possible, given the needs of services and patients, as well as supporting the colleague to attend their appointments. People requesting time off for medical appointments which relate to transition will not be treated any more or less favourably than people who take time off for any other medical appointment.

The amount of absence and overall length of a transition will depend on factors such as the colleague's needs, the availability and location of medical consultations and treatments, and maybe the colleague's own funds. For example, the colleague's transition may include consultations with medical staff, assessments with psychiatrists, hormone treatment, surgery, removal of facial hair or a hair transplant, and sessions to adjust their voice, and waits between these steps.

There is no law in place to specify any minimum or maximum time allowed for transition to take place and the Trust commits to be as supportive and flexible as possible, based on the individual circumstances of the individual colleague. Where a colleague is absent for a long period of time, for example when a colleague has an operation with a recovery period or medical complications that are not anticipated in the plan or are generally unwell and not fit for work as a consequence the Trust's Sickness Absence policy will apply. The situation will be supported in compliance with the policy as for all colleagues with consideration and flexibility being exercised in managing triggers.

Trust Responsibilities

Gender Neutral Facilities

The Trust is committed to ensuring that all facilities are inclusive of all our colleagues. The Trust supports the use of single sex facilities for trans and non-binary colleagues in accordance with their gender identity. Remember, a person does not need a gender recognition certificate to use the facility appropriate to their gender identity, and no-one has the right to ask a trans or non-binary colleague to leave a facility.

Where possible, all pre-existing single cubicle toilets should be identified as gender neutral and include sanitary bins. Any new facilities that are built within the Trust should undergo an Equality Impact Assessment and gender neutral facilities (toilets and changing rooms) should be provided where needed.

If it is not feasible to provide gender neutral facilities where facilities already exist, then signage should guide the person to the nearest gender neutral facilities. Trans people must not be asked, expected, or required to use accessible facilities allocated for people with disabilities.

Uniform and Dress

Please refer to the Trust Uniform and Dress policy. Of note, the individual will dress in accordance with the gender that they identify with. All uniform options are available to colleague's regardless of gender.

Harassment and Bullying

Trans, non-binary and gender non-conforming people have the same right to protection from harassment as any other people, in line with the Equality Act and supported by the Trust's Behavioural Charter. Colleagues should address negative behaviour displayed towards trans, non-binary and gender non-conforming people from other colleagues or people using our services: e.g. a trans woman repeatedly referred to as "he" despite having requested to use the pronoun "she".

If colleagues have particular worries or concerns about another colleague's attitude towards trans, non-binary, or gender non-conforming people (or any other person) they should address this with their line manager in the first instance. They may also access the Freedom to Speak Up Guardian, trade unions and/or contact HR for advice if they feel that their concern is not dealt with appropriately. Guidance is also available in the Dignity at Work policy.

Discrimination and harassment towards trans, non-binary and gender non-conforming people, such as intentionally and repeatedly using the wrong pronouns or name, or behaving negatively on the basis of a person's trans status or gender identity is tantamount to abuse.

Such incidents may be reported and investigated through our Trust internal investigation and complaints processes.

If other patients or members of the public are discriminatory towards trans, non-binary and gender non-conforming Trust colleagues, they must be reminded that this behaviour will not be tolerated by the Trust. The Trust has a duty under The Equality Act 2010 to foster good relationships between individuals who have protected characteristics and those who do not. If the discrimination continues, this will be managed in accordance with the Trusts Violence Prevention Reduction and Management of Violence and Aggression Policy.

Colleagues should treat trans, non-binary and gender non-conforming people using our services with dignity and respect and act in accordance with the Trust's policies and their professional or occupational standards. Providing person-centred and compassionate care is the most powerful thing colleagues can do to support trans, non-binary and gender non-conforming people.

It is unacceptable for colleagues to treat trans, non-binary or gender non-conforming colleagues or people using our services less favourably due to personal, cultural or religious attitudes toward this community.

References

Royal College of Nursing (2020). Fair care for trans and non-binary people: an RCN guide for nursing and health care professionals [online]. 3rd edn. Royal College of Nursing [viewed 26/4/22]. Available from Fair care for trans people | Royal College of Nursing (rcn.org.uk)

Wessex Local Medical Committee (2021). Transgender patients / gender reassignment [online]. Wessex Local Medical Committee [viewed 14/6/21]. Available from Wessex LMCs: Transgender Patients / Gender Reassignment

Primary Care Support England (no date). Process for registering a patient gender re-assignment [online] [viewed 14/6/21]. Available from Process for registering a patient gender re-assignment

Equality Act (2010) [online]. Available from Equality Act 2010 c. 15.

Gender Recognition Act (2004) [online]. Available from Gender Recognition Act 2004 c.7.

Stonewall (2022). List of LGBTQ+ terms [online] [viewed 26/4/22]. Available from List of LGBTQ+ terms.

Guidelines for Supporting Trans Patients & Staff – Brighton and Sussex University Hospitals NHS Trust

Supporting Gender Transitioning Colleague Guideline – The Dudley Group NHS Foundation Trust

Trans Employee Policy – Leicestershire Partnership NHS Trust

Supporting Individuals who are transgender policy – University Hospitals Birmingham

Other relevant documents

Supporting Patients Who Are Transgender, Non-Binary or Gender Non-Conforming Policy
A Guide to Inclusive Language in Documents, Protocols and Communications (Available on LGBTQ+ Network Intranet page)
Pronouns at Work (Available on LGBTQ+ Network Intranet page)
Behavioural Charter

Implementation Plan

This policy will be available on the Trust Intranet.

A policy briefing will be developed for Divisional Management Boards, Directorate Meetings and Worcestershire weekly.

HR Key Documents Supporting Documents

Supporting Document 1 - Equality Impact Assessment Tool

To be completed by the key document author and attached to key document when submitted to the appropriate committee for consideration and approval.

		Yes/No	Comments
1.	**Does the policy/guidance affect one group less or more favourably than another on the basis of:**		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
2.	**Is there any evidence that some groups are affected differently?**	No	
3.	**If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?**	NA	
4.	**Is the impact of the policy/guidance likely to be negative?**	No	
5.	**If so can the impact be avoided?**	NA	
6.	**What alternatives are there to achieving the policy/guidance without the impact?**	NA	
7.	**Can we reduce the impact by taking different action?**	NA	

If you have identified a potential discriminatory impact of this key document, please refer it to Assistant Manager of Human Resources, together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact Assistant Manager of Human Resources.