



Guidelines for Supporting Trans Patients & Staff

Version dated 02 December 2019

Department of Equality, Diversity & Inclusion

Introduction

Brighton & Sussex University Hospitals NHS Trust (BSUH) continually strive to put the patient first in everything that we do, delivering safe, high quality and compassionate care to all who need it.

Underpinned by the Trust's values of kindness and understanding, fairness and transparency, working together and excellence, our 'Patient First' philosophy is key to driving improvements across the Trust.

The Trust's goal is to establish a fully inclusive workplace. This means that discrimination on any grounds does not exist, that our staff are free to fully be their true selves and where patients can be confident of the standard of care that they'll receive.

Teams across our Trust strive to ensure that staff, service users and patients do not face discrimination on the grounds of their age, disability, gender identity, race (ethnicity, nationality, skin colour), religion or belief, marriage or civil partnership, pregnancy or maternity, sex and sexual orientation.

For trans, non-binary and/or gender non-conforming people, there are particular concerns around historical discrimination, structural inequalities, health inequalities, data protection and interpersonal communication that need to be thoughtfully and respectfully considered.

This document will introduce you to some of the concepts, considerations and actions you need to take to ensure that your team is fully inclusive. It will also help you effectively support colleagues who may be going through an important time in their lives.

The document is intended to be a useful guide for all staff – whether they are the person who is transitioning, their manager who is supporting them on the journey or the rest of the organisation who will continue to value and appreciate that person and their contribution to the workplace. Specific areas of interest for managers or HR professionals are highlighted in the table of contents.

If you need any further information, please contact the Equality, Diversity and Inclusion Team (EDI Team) - bsuh.equality@nhs.net.

Acknowledgements

We are grateful to the input of a wide range of groups and organisations in the development of these guidelines. These groups included community groups, third sector organisations, BSUH staff, the LGBTQ+ Staff Network and other public sector organisations working in Brighton and Hove.

Thank you to Rowan Davis of MindOut Brighton for providing comprehensive input and feedback to inform this update, as well as to Stonewall for reviewing and suggesting improvements.

Background and Purpose

Employers often act to address gender identity issues in their workplace only when the occasion arises. Poor preparation increases the chances of managers and staff acting inappropriately, causing shame, embarrassment and pain to the trans employee concerned. Fear of an inappropriate response may prevent people from transitioning which may, in turn, mean that their performance will be less than optimal. And they may feel unsafe in the workplace.

These guidelines therefore support staff members to 'do the right thing' for their colleagues and patients, as well as helping the Trust to deliver its legal and contractual obligations.

For BSUH staff, these guidelines will provide information to develop inclusive environments for trans staff and ensure that BSUH staff have a suitable level of information to inform their work.

For BSUH patients, this document will highlight best practice to help staff deliver fair, safe services to trans, non-binary and/or gender non-conforming people.

In both cases, this document will help to continually improve the quality of care and support available to our staff and patients.

This guidance applies to all Trust employees. Managers and team leaders should ensure that their staff have access to this guidance (online and print copies) and that they are given the opportunity to familiarise themselves with it. If you would like copies in other formats please contact the EDI Team directly.

This is not a prescriptive document, and the suggestions can be altered to fit the personal circumstances of the individual. This document is also underpinned by the Equality, Diversity and Inclusion Policy (HW019).

Further information is available on the Equality Hub and through specific training sessions provided by the Equality, Diversity and Inclusion Team (bsuh.equality@nhs.net).

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A Short Glossary

There are a number of terms used in these guidelines which may be unfamiliar to some individuals as they improve their knowledge on inclusivity and diversity. An in-depth glossary is provided in Section 6; however a handful of key terms have been highlighted below:

LGBTQ+ - The acronym for lesbian, gay, bi, trans, and queer (or questioning). The '+' includes anyone who doesn't specifically identify with any of those terms to ensure that all of the Trust's diverse staff and patients feel included.

Gender - often expressed in terms of masculinity and femininity, gender is largely culturally determined and is assumed from the sex assigned at birth.

Gender Dysphoria – Used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity.

Gender expression – this is how a person presents themselves on any given day in terms of the clothes they wear for example, how they speak, and so forth. Gender expression does not always match gender identity.

Gender identity – how a person sees themselves/feels in terms of social constructions of what it means to be a man/woman and sometimes, their own feelings about what being a man/woman actually relates to.

Sex – a term used to denote male/female/intersex variations, largely based on visible physical differences and attributes.

Trans (transgender) – a person whose sex attributed at birth does not match their gender identity.

Transition - used to describe the point at which a permanent change of gender role is undertaken, in all spheres of life – in the family, at work, in leisure pursuits and in society generally.

In addition to the glossary we have provided in Section 6, Stonewall have an excellent (and regularly updated) language guide available online: <https://www.stonewall.org.uk/help-advice/glossary-terms>

Section 1: Supporting Staff – an introduction and legal framework for all staff

Building an open, diverse, inclusive and fair workplace is an important part of creating a Trust that provides outstanding care for its patients and its employees.

Evidence shows that, in the workplace, trans employees and those thinking about undergoing transition may experience isolation, poorer mental health and anxiety. Within this evidence, it is also clear that the same pattern is visible for non-binary and gender non-conforming individuals.

Some choose to leave the workplace, undergo transition and then find another job. It is estimated that around 50% of trans-identified people choosing to transition do this because of fears about transitioning at work and anxiety about having to 'come out' and/or deal with workplace bureaucracy.

For Trusts such as BSUH, this may mean that highly skilled, qualified and compassionate individuals leave the workforce – or choose not to join it in the first place.

This is why it is important to have clear signifiers that workplaces/teams/departments are trans-inclusive and these guidelines will help you with that.

For trans colleagues, these signifiers mean that they do not need to hide who they are when they come to work, which many trans people do on a daily basis out of fear of discrimination. Without these signifiers, trans colleagues (or potential colleagues) may anticipate experiencing discrimination and so apply a 'filter' to themselves and their work (for example not presenting or expressing their gender).

These signifiers also ensure that trans people are not afraid to apply for jobs in other departments. Without these signifiers and support, trans colleagues may feel limited in which teams/departments they feel safe to apply to work in. This can have a longer term impact on their ability to progress in their career.

If you are unfamiliar about the needs of trans, non-binary and gender diverse people, and what workplaces and employers must do to visibly demonstrate trans-inclusion, then one source of support will be the Equality, Diversity and Inclusion Team, who can provide awareness-raising and Q&A sessions.

Even if you do not have someone who is trans and out in your team, you still need to make sure that your department is trans-inclusive.

These sessions doesn't take very long and can be the first step to improving inclusion in your service and among your team. It can reduce the pressure on individual trans, non-binary and gender diverse people to have to explain who they are, challenge transphobia and discrimination every single time it is encountered. These sessions will also empower staff to become allies, supporting their trans colleagues and patients in the best way possible.

1.1 Legislative framework

There are a number of important pieces of legislation which protect the rights of all colleagues from discrimination, and in particular trans individuals.

These pieces of legislation are summarised below – please see Section 7 for fuller guidance on each one

1.1.1 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 the point that their transition is at.

1.1.2 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, and asking to see one is nearly always inappropriate. Appropriate identification can be provided from driving licences or other official documents.

1.1.3 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.

1.1.4 Data Protection

Under the General Data Protection Regulation of 2018, trans status and details relating to an employee'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

employee gives explicit consent or where it is necessary for carrying out rights and obligations under employment law.

For further guidance, please speak to the BSUH Information Governance Team (<https://www.bsuh.nhs.uk/working-here/information-governance/>) and remember that you should always have your colleague's (or patient's) explicit consent to discuss matters relating to them with another person.

1.1.5 Legislation Summary

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.

This ensures that the initial stage is covered by the legislation, when an individual indicates an intention to commence gender reassignment. It is not necessary for all three circumstances to apply.

In this context, discrimination means treating a trans person less favourably than you treat (or would treat) another person who is not undergoing gender reassignment (or contemplating it etc.).

It is also unlawful for an employer to instruct someone else to do something discriminatory – for instance telling an employment agency not to hire a trans person. Pressure to discriminate is also unlawful – e.g. employees threatening not to work unless their employer dismisses a colleague who has decided to undergo gender reassignment.

For further information about ensuring that recruitment agencies uphold our values, please see Section 7.3.

If you require any additional help to understand how the law protects trans colleagues and patients (as well as those with other protected characteristics), please contact our Equality, Diversity and Inclusion Team.

1.2 - Practical advice for Managers to support colleagues

In addition to ensuring that the Trust has visible signs and signifiers of the support on offer, there are some specific ways in which managers can support their colleagues' transition journeys.

Some of these are set out below – for further information, ideas and support please contact our Equality, Diversity and Inclusion Team.

Every person is different

It is important to remember that every trans person is different and will want to approach their transition differently. Ensure that individuals are consulted with and asked about how they want to approach different concerns. While one employee may choose to be 'out' about their trans status, others may not wish to be. This must be respected and you should take the lead from the needs of the trans member of staff, especially around the different options for transitioning (including medical or social transition).

Everything that follows in these guidelines is an overall 'rule of thumb' only. The key is to communicate openly and honestly with your colleague, and be guided by what they feel is best for them.

1.2.1 Treatment timescales and time off work

This is a general guide only and it is paramount to take individual needs into account on every occasion.

The timescales for diagnosis of gender dysphoria vary widely. Waiting times can be up to two years and you should recognise that a person may want to transition at work (in terms of their appearance and presentation) prior to completion of any medical intervention they may/may not want undergo.

At some point the individual will want to start to live full time in their affirmed gender and their name and other records (such as their driving licence and passport) may be formally changed.

Remember that treatment times and options vary and while some procedures may require less than two weeks absence from work, others may take much longer. Sometimes 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.

It is good practice to discuss at the earliest opportunity in advance the time away from work that an individual will need. When the individual is absent for treatment then normal sick pay arrangements should apply (refer to the Health, Wellbeing and Attendance Policy (HR013)). The normal procedure for medical appointments should also apply, as well as flexibility to individuals who may need to take holiday or rearrange working hours in order to attend additional appointments. It is important to remember that it may constitute unlawful discrimination if an individual is treated less favourably when undergoing treatment necessary for their transition than others who are absent from work for other medical reasons.

1.2.2 When discussing a colleague's particular journey

- Talk to them about projected timescale, if known, of any medical and surgical procedures and the time off requirement for medical treatment, including a discussion about how absences will be recorded and monitored. Time off for treatments related to gender reassignment are specifically protected under the Equality Act 2010 and should be regarded as a short-term reasonable adjustment (not used in relation to any absence management process)
- The expected point or phase of change of name, personal details and social gender. Name change may occur without any legal process but, before documentation is changed, it is usual for a Statutory Declaration (made before a solicitor or in a Magistrates' Court) or a Deed Poll document to be obtained. NB. The requirements imposed for confirming identity should be equivalent to the requirements generally required for employees changing their name i.e. trans employees should not be put through a more burdensome process than what is typically required
- Agreeing any dress code requirements
- Agreeing the point at which the employee will commence using the gender appropriate facilities in the new gender role, for example toilets and changing areas. This should occur from the time when the employee transitions in their gender role at work.

Our dress code policy is flexible enough to accommodate the process of transition and also the needs of those who are non-binary.

1.2.3 Disclosure advice for Managers

- As a manager, you need to talk to your trans colleague to establish whether they wish to inform colleagues about their trans status and transition. It is respectful and shows that you value a person to ensure that their needs are considered.
- Remember: employees are under no obligation to inform anyone about their trans status or the process they choose to undergo.
- While it is usually good practice for the manager to take responsibility for informing those who need to know, always check with the employee and consult them before any disclosure is made, to whom and at what point in their journey. Level of disclosure may vary depending on the size of the department and the extent to which the employee proposing to change gender role has face-to-face contact with co-workers.
 - You may also like to consider signposting resources for your team so that they don't have to keep going back to your trans colleague with a series of questions after their disclosure
 - Whether training or briefing colleagues will be necessary and at what point and by whom this will be carried out – advice in this regard should be taken from HR or the Equality, Diversity and Inclusion team.

Part of the training/briefing process may include awareness sessions for teams, which should take place on two levels:

- General information about trans communities

- Specific information to enable people to understand the needs of the individual involved.

The following example involves a person who is beginning their transition in the workplace.

Level one: a trans person has a private interview with their senior management;

Level two: the senior manager calls a meeting of those colleagues who work closely with the person, and explains the situation and provides basic information; the trans person joins the group for lunch and makes it clear that they are happy to talk about it and welcomes any questions;

Level three: an email written by the trans person is sent out to all other employees in the same building. The contents of this may vary depending on the specific circumstances of the employee and an illustrative example is included as an appendix in Section 7.4.

Do remember that it is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender reassignment, and 'outing' someone could be classed as bullying or harassment, or even a hate crime depending on the context. The decision to disclose a transition journey should be a private matter since gender reassignment will have no bearing on that person's ability to do their job.

In the instance where an employee is harassed, bullied or discriminated against by Trust employees, the Equality, Diversity and Inclusion Policy (HW019) and Resolution Policy (HR014) provides details on how complaints of this nature should be handled. Disciplinary action will be taken against Trust employees who engage in these types of behaviours.

1.2.4 Relocation or Redeployment during Transition

The employee may wish to be relocated or redeployed during the initial period if, for example, their working environment is stressful, perhaps because they have direct contact with the public or there is a history of transphobia within the team which has not been addressed or resolved.

Where there are issues within a team, the Trust will provide all appropriate guidance, training and direction to that team. This will help them to better appreciate their colleague's journey and, hopefully, prevent that colleague from feeling the need to leave their position out of a fear of non-acceptance.

Relocation/redeployment may not always be necessary or appropriate; however any decision should always be made in consultation with the employee. Some employees may prefer to stay within the environment in which they have made friends and where they feel supported. Trans employees must not feel restricted to areas which they consider 'safe'. An employer must ensure all spaces and teams are safe for trans colleagues and patients.

- You should also consider whether there are duties within the role that should not be undertaken at specific times within the process (for instance heavy physical work following surgery)

- Think about what risks may arise for the employee in the workplace as a result of the transition, for instance in relationships with external parties or arising from media intrusion, and how they will be dealt with
- With the permission of your colleague, liaise with any clients or external agencies in respect of any outstanding matters in which the trans employee is currently involved

1.2.5 Employment policies and processes – considerations for Managers & HR Teams:

- What amendments will be required to records and systems and the safeguards of security
- What the implications are for pensions and insurance
- Whether a trans employee is adequately covered by existing policy on issues such as confidentiality, harassment and corporate insurance, and if not have these documents amended as a priority
- If DBS checks are required, following a change of name, a special procedure may be accessed (please ask HR Employment Services for assistance)

1.3 Other things you can do – advice for all staff and Managers

1.3.1 Consider providing gender neutral facilities

While an increasing number of organisations (and teams at this Trust) have introduced gender neutral facilities in recognition of gender diversity and safety of all people, not all areas have these. Make sure to indicate that facilities such as toilets and changing rooms should be accessed according to the full-time presentation of the employee. Ensure that access to the relevant facilities are available to all employees as far as is practical.

Trans people are not to be regarded as disabled. Employers may consider changing the labelling on some facilities so that they are gender neutral. Greater privacy may be provided by having more cubicles, and by having partitions and doors that extend from floor to ceiling.

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 employee to leave a facility; if a person feels uncomfortable they should consider leaving and seeking appropriate advice from our Equality, Diversity and Inclusion team.

1.3.2 Supporting your colleague by supporting yourself and your team

If you are in a management role, ensure that you are suitably informed about Gender and Sexual Diversity in the workplace, regardless of the status of your employees. You can always ask for training or for the Inclusion Team to run Q&A sessions.

You may need to consider helping your team to become even more inclusive – assistance is available from the Equality, Diversity and Inclusion Team to do this.

You may also need to think about how to deal with individuals who (following education) do not understand the situation, are unsympathetic or behave in discriminatory ways. This could include asking overly intrusive questions about the employee's trans status and medical treatments. Appropriate action will be taken in line with Trust policies (specifically the Equality, Diversity and Inclusion Policy).

1.4 Memorandum of understanding – a practical suggestion for Managers

To help create clarity between you and your colleague as they go through their journey, you may find it useful to draw up a 'Memorandum of Understanding' (MoU).

This confidential document would be reviewed at regular intervals and represents a commitment from the manager and the Trust to support the colleague through every stage of their transition.

Although not the only part in the journey, an MoU will help to create a sensitive and supportive environment during a colleague's transition. It may also help to avoid damaging the relationship of trust and confidence that is implied in everyone's contract between them and the Trust.

The MoU will also help you and your colleague to ensure that every aspect of their transition, and support on offer, from the Trust is carefully considered.

You may wish to structure the MoU using the bullet points under the 'Issues to be discussed' section on the previous page.

The employee and the manager will need to agree the proposed actions to ensure there is mutual understanding about what needs to take place. **Nothing must be done without the consent of the employee.**

Who would be involved in drawing up the MoU?

While the initial meetings and the drafting of the document can be undertaken by the staff member's line manager or support manager, a member of the HR team should take an active role in the discussions and to meet with the employee to review the details of the memorandum before it is signed. This must be done with the agreement of the employee. The trans member of staff may wish to have the assistance and support of a colleague, trades union or LGBTQ+ Network representative during this process.

Who should sign the MoU?

The trans member of staff and the line manager (or other senior member of staff) should sign this document. The agreement does not represent a binding and unchangeable arrangement, but rather a commitment by the employer to engage with and support the employee at all stages.

There needs to be an agreement on where copies should be kept and who should have access. It is important that this confidential information is not shared in the workplace in an uncontrolled way.

1.5 Ensuring that all records are accurate – and confidential

All efforts will be made to ensure that all documents, public references (such as telephone directories, prospectuses, web biographies) and employment details reflect the acquired gender of the employee. This will prevent any breach of confidentiality.

Where documents have been seen and copies taken at the point of starting employment then every effort should be made to replace those with equivalent documents in the new name and gender. All documents will be held confidentially in line with HR/Data Protection policies and best practice.

HR managers who have overseen or helped the manager with the transition process need to ensure that they inform other departments such as Occupational Health to update their records. This mitigates the need for employees themselves to have to check that all records reflect their acquired gender. It reduces needless anxiety and helps to ensure that processes protect privacy.

1.5.1 Privacy, Personal Records and References

The utmost discretion is needed when dealing with telephone calls and any other instance where there is an opportunity for information to be overheard or otherwise received by someone else. Staff, particularly those working in environments where members of the public may make incoming calls, should be trained to understand the need for privacy and the importance of using correct pronouns as well as using non-gendered language to avoid misgendering people from the start.

The Trust is mindful of, and compliant with, its responsibilities under GDPR, and this applies equally to all staff, patients, volunteers and visitors.

In some cases it may be necessary to retain records relating to an employee's identity at birth for example pension or insurance purposes – the HR and Equality, Diversity and Inclusion Teams can advise in these instances. Access to any records showing the change of name and other details associated with the individual's trans status such as records of absence for medical treatment should be restricted to staff who require such information to perform their specific duties. Managers need to make sure they have specified why someone needs access to the information and for what purpose. If the former name ('dead name') of a person is still visible in the records, staff accessing the records need to be made aware not to use the 'dead name' and only use the acquired name of the person.

These documents should be stored securely in a sealed envelope, separate from the files of other employees, rather than in a filing cabinet. Trans employees in employment may choose voluntarily to disclose at a secondary level, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. However, this does

not mean that the employee is comfortable with onward disclosure to others; the need for strict confidentiality should be assumed unless the employee gives permission for onward disclosure.

Breaches of confidentiality will be treated in the same serious manner as a disclosure of personal details of any other employee. This applies even if the person does not hold a Gender Recognition Certificate under the terms of GDPR. Those who obtain such information as part of their job – therefore, in an ‘official capacity’ – could be committing a criminal offence if they shared this information with anyone else, unless this is authorised by the trans individual concerned.

1.6 Use of pronouns – useful advice for all staff

Gender pronouns such as they, zir, ze, she, he, etc. specifically refer to people who you are talking about. We don’t tend to think a whole lot about them. We tend to interpret or “read” a person’s gender based on their outward appearance, presentation and expression, and “assign” a pronoun. But our reading may not be a correct interpretation of the person’s gender. Why? Because gender identity is an internal sense of one’s own gender and we don’t necessarily know a person’s correct gender pronoun by looking at them.

Small steps and discussions about gender pronouns will lead to it becoming common practice to indicate preferred pronouns immediately, this means there’s less chance of someone feeling marginalized or pressured to explain themselves/their preferences on their own. This applies equally to all staff and the choices should always be respected as far as practically possible. The Trust is working to make all of its forms gender neutral, however these options are not always available on national forms.

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.

It is a privilege to not have to worry about which pronoun someone is going to use for you based on how they perceive your gender. If you have this privilege, yet fail to respect someone else’s gender identity, it is not only disrespectful and hurtful, but also oppressive.

1.6.1 How can you be inclusive in using and respecting gender pronouns?

- Discussing and correctly using gender pronouns sets a tone of respect and allyship that trans, non-binary and gender non-conforming people are not being taken for granted. This is especially important for people who have transitioned in the workplace, new staff and service users who may feel particularly vulnerable, friendless and scared in a healthcare environment and in wider society.
- You might want to consider including a ‘My Pronoun Is...’ message in your email signature to help make this a normal part of our working lives.
- Some people may prefer to be just called by their name, and avoid gender pronouns altogether. Please respect this.
- When asking during verbal introductions you may feel awkward at first, but that is because we are not used to doing it. We are not in the habit of asking. Remember, it

is always more awkward getting it wrong or making a hurtful assumption. You can ask:

- “What pronouns do you use?”
- “How would you like me to refer to you?”
- “How would you like to be addressed?”
- “Can you remind me which pronouns you like for yourself?”
- “My name is Sam and my pronouns are she and her. What about you?”

If you accidentally use the wrong pronoun, acknowledge, apologise and then move on. Don't continue to draw attention to the error as it will continue to make you – and the person you're addressing – feel awkward.

Any members of staff who refuse to use the name, pronouns or gender deemed appropriate by another member of staff will be seen as acting in a harassing and/or discriminatory manner and may be subject to disciplinary procedures under the Resolution Policy (HR014).

1.7 Specific workplace considerations for Managers and HR Teams

This section will be specifically useful if you recruit new staff, or have dealings with workplace insurance, pensions or retirement information.

1.7.1 Recruitment

There are very few instances where it is appropriate to specify an applicant's gender in a recruitment advertisement.

If you believe that the role on offer has a genuine requirement to be restricted to a particular gender, you should seek advice from the HR and Equality, Diversity and Inclusion teams before progressing with your recruitment.

1.7.2 Health and Safety

Manager should ensure that ongoing Risk Assessments are carried out for all staff equally, regardless of their sex or gender, as appropriate for the role they are delivering.

1.7.3 Insurance matters

Employers registering staff for corporate insurance are advised to inform their underwriters if they know of a trans employee's status, since some insurers automatically invalidate a policy if a major fact such as medical/surgical gender reassignment is not disclosed. The employer should inform the employee before disclosing this information. If an employer is unaware that an employee has a reassigned gender, the obligation to disclose falls upon the employee, who could also be held liable in the event of an accident for which no valid insurance cover exists.

1.7.4 Pensions and retirement

For state pension purposes, trans people can only be regarded as the sex recorded at birth until they have obtained a new birth certificate under the provisions of the Gender Recognition Act 2004. Otherwise, those born prior to April 1955 can only claim state pension at the age appropriate to the sex on the original birth certificate. A trans woman is entitled to receive a state pension from the age of 60 without a GRC, if she reached that age before 4 April 2005 when the Gender Recognition Act came into force. It is the responsibility of the employer to take suitable steps to keep confidential the reason for the employee's apparent early or late retirement.

Trans members of staff who are in possession of a GRC and members of the NHS Pension Scheme, should contact NHS Pensions (<http://www.nhsbsa.nhs.uk/pensions>) for further advice.

1.7.5 Dealing with the Media

There has been a recent increase in media scrutiny of the lives of trans people. The Trust's Corporate Communications Team should be consulted if there is any interest shown in the

lives of any of the Trust's employees, and this is especially true for our trans colleagues and any others who have protected characteristics.

The Trust will do everything possible to protect its employees and ensure that they can continue to deliver the best care possible in a safe, supportive environment.

If an employee does experience unwanted attention from the media, it may be wise to consider taking appropriate actions as advised by the Equality, Diversity and Inclusion Team.

A sample inclusion paragraph has been included as an appendix in Section 7.5 to this document for your information – but it should never be issued to the media without consultation with the Corporate Communications Team.

The Communications Team can be contacted on 01273 664911 / bsuh.communications@nhs.net.

1.7.6 Supporting other gender diverse people

Our Trust believes that all of our staff should be treated equally, regardless of their gender expression or gender identity. BSUH offers support for non-binary people in the workplace along with those who are gender diverse or gender non-conforming. We frequently go beyond our legal obligations to ensure that we create an environment that is inclusive and welcoming to all our staff and potential recruits.

A person who comes out as trans must be treated fairly regardless of the stage of their transition, what procedures they do/do not undergo and the timescale. Remember, each trans person's journey is different, and for some, it can be a life-long process.

1.7.7 Further information, advice and training

None of the services listed seek to replace specialist expert advice, but aim to help/support with issues relating to work.

- **Department of Equality, Diversity and Inclusion:** provides advice on legal issues and transitioning in the workplace. Contact bsuh.equality@nhs.net
- **HELP (Health, Employee Learning and Psychotherapy Services):** provides confidential support, counselling or psychotherapy.
- **HR:** able to advise and support on transitioning, employee rights and processes to get paperwork and online records changed.
- **Occupational Health:** self-referral, wide range of support
- LGBTQ+ Network – www.bsuh.nhs.uk/lgbtq
- Further information is available on www.bsuh.nhs.uk

Staff have a responsibility and a duty to keep updated and informed about gender and sexual diversity. You can access additional support and guidance via the [Equality Hub](#). Or contact the following groups directly.

- [GIRES](http://www.gires.org.uk) will help any employer or employee undertaking a transition at work.
<http://www.gires.org.uk>
- [The Clare Project](http://www.clareproject.org.uk/) is a self-supporting group based in Brighton and Hove open to anyone wishing to explore issues around gender identity.
<http://www.clareproject.org.uk/>
- Transformers is a group set up by [Allsorts Youth Project](http://www.allsortsyouth.org.uk/groups/transformers/), which support people who are trans or are questioning between the ages of 16-25.
<http://www.allsortsyouth.org.uk/groups/transformers/>
- Trans advocacy service in Brighton and Hove is provided by Mindout. The service offers advice, information representation and case work support on all issues related to: trans care pathways including services and treatment at the gender identity clinic; primary and secondary care; social care; legal issues; family and relationships; employment; housing; hate crime, bullying and harassment; diagnosis and treatment options. www.mindout.org.uk

1.7.8 References for Section 1

- House of Commons – Women and Equalities Committee, Transgender Equality - First Report of Session 2015/16, 14 January 2016
- GIRES – Legal Protection and Good Practice for Gender Variant, Transsexual and Transgender People in the Workplace, October 2010
- Women & Equality Unit – Gender Reassignment – A Guide for Employers, January 2005
- Galop - Shining the Light, 10 Keys to Becoming a Trans Positive Organisation, 2011
- Government Equality Office – The Recruitment and Retention of Transgender Staff (Guidance for Employers), November 2015
- Stonewall Scotland and Scottish Transgender Alliance – Changing for the Better (2nd Edition 2012)
- Government Equalities Office, July 2018, LGBT Survey

2. Consideration of trans people in service provision – useful information for all staff

Everything our Trust does is designed to make patient care better all the time. We recognise that there have been historical inadequacies in the treatment of trans patients, and these guidelines are intended to help continually improve the care we offer.

The key to providing outstanding care for our trans patients is to treat trans and transitioning patients as they present themselves to you.

The following paragraphs will help you to identify specific concerns and issues experienced by trans patients, and offer advice on how to mitigate them.

2.1 Hospitals – in General

Attitude of staff is not the only factor, but also knowledge of social and medical issues affecting trans patients across the board. Also note that trans people do not just come into contact with health services for procedures relating to transitioning. They can be injured, suffer from illness and succumb to the effects of ageing like everyone else.

Good care relies on staff knowing when a trans patient's gender history is relevant and when it is not, and at all times treating patients in a respectful and dignified manner.

2.2 Specialist Clinics

Some clinics provide gender-specific or gender segregated services. An example of the former may be a clinic performing prostate examinations. Similarly clinics dealing in genito-urinary infections may have sessions for men and sessions for women, or separate entrances. It would be unacceptable to require a trans woman to use a waiting room for men in the former case, or for a trans man to share a female clinic waiting area in the latter case. If an examination needs to be conducted in specific room because it contains appropriate equipment, but which would not ordinarily be used for a person of that gender (for example, a trans man needing to be examined in a room ordinarily used for the examination of women), this should be clearly explained to the patient and sensitively managed.

2.3 Hospital Wards

As with clinics, consideration is necessary to review the impact of single-gender accommodation which will impact privacy and dignity. The general rule of thumb is that staff should treat transitioning patients as they present, sufficient privacy can usually be ensured through the use of curtains or a side room. It is also good practice to have a discrete conversation with the patient concerned about where they would feel most comfortable – this will particularly benefit non-binary patients and help them to feel welcome.

The Trust will always try to be responsive to patients' needs, within the confines of the specialist service being used by the patient, and their clinical need.

There may be times where there may be a need to protect a vulnerable patient (i.e. the trans patient) and think of alternatives with the patient concerned. Consider, for instance, the scenario of a trans man who has asked for a hysterectomy. The same principles will apply to toilets and facilities the patient will be using. Make sure to ask the patient what additional requirements they may have and try to facilitate this if you can.

2.4 Routine Health Screening

Trans people need to be screened for risks such as cervical, breast or prostate cancer on the basis of physiological need (i.e. what body organs are present), not their birth or acquired gender. Systems and procedures may need to be reviewed with this and the need for patient privacy in mind. Guidelines are available from [Public Health England – NHS Screening Programmes: Information for Trans People.](#)

2.5 Medical Records

Trans patient's medical records will contain details of any gender affirmation treatment and changes of name. Their rights to medical confidentiality are the same as everyone else's, but there are some additional considerations you should bear in mind.

Even without the legal protection afforded by the Gender Recognition Act (2004) (GRA), it is good practice to take positive steps to ensure that the gender reassignment or any documents/information related to this is not casually visible or communicated without the informed consent of the patient/service user. This may require the review of relevant policies and specific instructions to staff. Bear in mind, inappropriate disclosure of a trans person's gender reassignment history and can lead to prosecution.

Name change can be achieved in the UK at any time without any legal process, as long as there is no intention to defraud or deceive anyone. However, if evidence of a change of name is required this should be comparable to the requirements for any other person changing their name for a variety of reasons. Under no circumstances should hospital staff ever request to see a GRC (this could be seen as harassment), confirmation of identity can be taken from passports, bills, driving license, etc.

For example a trans person can obtain a new driving licence or passport through a Statutory Declaration before a solicitor or magistrate (the latter in court), by Deed Poll or by providing a simple written statement signed by the person concerned. This evidence with an accompanying letter from a doctor can be used to change names officially on such documents.

There is a nationally agreed process to deal with medical records for Trans patients, which results in a new NHS number being issued, and a local update of the patient's record and case notes which is done through the GP. Contact the Patient Administration Systems (PAS) Team and the Corporate Data Department for comprehensive guidance.

2.6 Communication

Names and pronouns should be in accordance to the request of the patient.

If administrative staff are unsure whether to address correspondence to an individual as Mr, Miss, Ms, Mx or Mrs, it is best to ask, discreetly, or omit it altogether. Envelopes may be addressed using initials only, where there is uncertainty.

While having a telephone conversation it is sometimes easy to assume a person's gender by the pitch and tone of their voice. If there is doubt to how a person identifies and it's a short call, ask for their name and use that, or refer to them by generic gender pronouns such as 'they' if necessary. If the conversation is longer, politely ask how they like would to be addressed or what pronouns they prefer to be used.

2.7 Consultation

Trans people should be included in consultations concerning the way that every aspect of their identity affects their healthcare.

Some trans people may use breast clinics, for example, and they may have personal safety concerns accessing surgeries and clinics like other women. Other trans people may have needs relating to retained female aspects of their anatomy, and have a view on services targeting their health as men.

Being trans and having additional physical or mental impairments (covered under disability section of the EqA) may add additional concerns for service users. Do consider this. Trans people may also have caring responsibilities; they have specific concerns about ageing and so forth.

2.8 Expectations of Staff Behaviours

It is the responsibility of all staff to treat trans patients with respect, dignity, sensitivity and without judgement. Failure to do so will invariably lead to patients being discriminated against, and formal action under the relevant policy and procedures will be taken.

Refusing to use a name, pronouns or gender which the patient recognises or asking intrusive questions about a patient's trans status when not relevant or pertinent to treatment is a form of harassment and a form of discrimination.

2.9 Health Promotion

If you are running a public health campaign, or contributing to one with partner organisations, you need to consider the factors that influence specific behaviours (for example smoking, alcohol, diet and exercise) for trans people – otherwise campaigns aimed at changing behaviours may miss this cohort. This could lead to initiatives that simply fail to appreciate the driving forces in the lives of trans people and will therefore be ineffective in helping.

2.10 Pastoral and spiritual care

All trans people have the right to access pastoral and spiritual care. The chaplaincy team have been trained in gender and sexual diversity and will be able to help trans patients in hospital, just as they do anyone else. Please ensure that trans patients, particularly those on the end of life pathway, are aware of this.

2.11 Awareness and training

The average GP practice encounters one or more trans persons as a matter of routine – or their partners and relatives. The same applies to hospitals and clinics.

This means that awareness of trans needs must not be left as an afterthought. Staff must be aware and knowledgeable so they can talk to people sensitively, respectfully, with compassion and care. The Equality Team run face-to-face Gender and Sexual Diversity sessions all year round – make sure your team access this training opportunity. Staff also need to be clear on how health records are managed and accessed for trans patients.

Staff who work in services which link into recognised pathways for addressing gender diversity e.g. urology, endocrinology, should familiarise themselves with local pathways for gender reassignment. This is also true of services which may be frequently accessed by trans patients e.g. outpatients, surgical wards, emergency departments, etc.

Professional bodies have protocols available and you can access them online. For example:

- [The World Professional Organisation for Transgender Health](https://www.wpath.org/publications/soc)
<https://www.wpath.org/publications/soc>
- [NHS England Gender Protocol and Service Guidelines](https://www.england.nhs.uk/wp-content/uploads/2013/10/int-gend-proto.pdf)
- <https://www.england.nhs.uk/wp-content/uploads/2013/10/int-gend-proto.pdf>

2.12 Privacy

Respect the privacy of the patient; it is against the law to disclose a person's trans status without their explicit approval.

2.13 Health Advice

The way that health advice is given to the public (e.g. leaflets in open patient areas) may warrant attention; not all trans people are out or comfortable accessing information in highly visible areas. Trans people and their families need discreet access to good advice. The Department of Health and Social Services has commissioned a set of leaflets covering a range of topics that service users and their families can use. You can find by going to: <http://www.gires.org.uk/health/departement-of-health-literature-project> .

We are also constantly improving our Equality Hub (www.EqualityHub.org), ensuring that the best possible information, advice and guidance can be found there.

2.14 Waiting Times for Gender Reassignment/Affirmation Treatment information

Currently there are long delays in accessing the required treatment after referral.

During this period, patients and service users can be especially vulnerable and will benefit from a sympathetic and supportive approach from healthcare providers. In the interest of harm reduction care providers are able to prescribe hormones in the interim period. You can find information from NHS England and the General Medical Council (contact the GMC directly).

[NHS England Gender Identity Services For Adults – Non Surgical Interventions](https://www.england.nhs.uk/wp-content/uploads/2018/10/Gender-identity-services-for-adults-non-surgical-interventions.pdf)

<https://www.england.nhs.uk/wp-content/uploads/2018/10/Gender-identity-services-for-adults-non-surgical-interventions.pdf>

2.15 Travelling Distances

Many processes relating to gender reassignment surgery have resulted in patients having to travel long distances for appointments. Some parts of the country have no local provision at all and in commissioning services it may not be appreciated that many services involved (for example speech therapy, endocrinology or counselling) could be provided from local sources with little or no professional development.

Clinics should take adequate account of this in the allocation of appointments, avoiding severe difficulties in attending and helping to minimise the necessary time off with employers.

It is possible that all but very specialist elements of gender services could be provided locally (or regionally) if coordinated by an appropriate local professional, eg. GP with Special Interest (GPwSI).

It should be noted that excessive travelling requirements, may render existing arrangements non-compliant with the Equality Act 2010 if the services are inaccessible to disabled service users as a result.

2.16 Inflexibility

Some of the problems reported relate to inflexibility – either within the services provided, or in terms of funding rules. Two common scenarios are that the service may fail to accommodate the life circumstances of a service user (for example someone needing to transfer from private care and continue their advanced treatment with an NHS provider). Or the realities forced upon them (for example needing to move to a different area in mid-treatment). Services should therefore be able to cater for different entry or handover situations without requiring the service user to start treatment again from scratch, and commissioner support may be required to ensure that the person is not prevented from accessing funding for a period after moving into their catchment. These are likely to be both unethical and unlawful.

2.17 Holistic Care

It is important to remember that trans people are not just trans. Experiences are also influenced by other factors some of which are listed below. Sometimes these combinations can add to the barriers that people face.

Gender

A trans person is as likely as anyone else to be affected by issues related to their gender – for example misogyny. Do consider the wider identity of a trans person when considering how services can be inclusive.

Ethnicity

Studies have shown that trans people (in particular trans women) who are Black, Asian or Minority Ethnic are disproportionately affected by multiple discrimination. The majority of violent hate crimes for example, are committed against trans women of colour, and this cohort is the least likely to access healthcare services when they need it, for fear of prejudice, discrimination and poor treatment. You can learn more about how race/ethnicity Inclusivity – Supporting BAME Trans People by Sabah Choudrey, available for download from <https://www.gires.org.uk/>

Disability

Studies and research have shown that trans people are more likely to have mental health concerns and less likely to be able to access services to help them. Frequently, mainstream providers do not have people trained to be aware of trans issues. Furthermore trans people with physical and learning disabilities are again more likely to face greater barriers to access relevant support services. Staff need to be aware of how this can impact longer term care and short term services. Furthermore, people with disabilities who are trans have the right to access gender reassignment or gender affirmation services.

For more information and advice, please speak to our Equality, Diversity and Inclusion Team.

Religion and Belief

Some staff may voice objections towards treating trans service users on the grounds of their religion or beliefs – this would be classed as discrimination. Managers must be prepared to deal with this in the same manner as for any other similar objection (for example on the grounds of sexual orientation), in line with the Equality, Diversity and Inclusion Policy.

Sexual Orientation

Being trans is not a sexual orientation. Being trans doesn't predict sexual orientation. Trans people can be heterosexual, gay, lesbian, bisexual, pansexual or asexual. Their sexual orientation may also be fluid, and change.

Age

Age affects everyone, but can affect trans people disproportionately. Trans people have particular health concerns and social care concerns with regard to ageing. A fact sheet on this has been produced by Age UK: <http://www.ageuk.org.uk/health-wellbeing/relationships-and-family/lgbt-information-and-advice/lesbian-gay-bisexual-or-transgender-in-later-life/>

Employers and employees both share negative assumptions about age. It is anticipated that by 2021, 40% of the population will be over 50. The proportion is already over 30%. Many people 50+ expect to encounter difficulties in even getting interviews for jobs. This also affects the fear of losing a job. Trans people feel this fear acutely. People who transition later in life may have increased difficulties with appearance as they may need longer to heal from surgeries/treatment.

The incidents of attempted suicide and self-harm in young trans people remains disproportionately high, and our Trust works closely with a range of community partners who are specialists in supporting young people.

This disproportionate risk could be a reflection of the significant inequalities relating to health, wellbeing and broader social and economic circumstances experienced by trans people. It is therefore important to recognise and understand the issues affecting younger trans people. The Royal College of Nursing and Public Health England have produced a useful toolkit for nurses, which explores these issues (and warning signs). The document is called 'Preventing Suicide Among Trans Young People' and can be accessed by going to: <https://www.gov.uk/government/publications/preventing-suicide-lesbian-gay-and-bisexual-young-people>

3. Ten Ways to improve services for trans people

1. Always respect a trans person's chosen pronoun. This may be in the form of "he" or "she", but might also include gender neutral pronouns such as "ze" or "they". If you accidentally use the wrong pronoun, acknowledge, apologise and then move on. Don't continue to draw attention to the error as it will continue to make you – and the person you're addressing – feel awkward. Using correct pronouns promotes a professional atmosphere of respect and understanding.
2. Welcome trans people by promoting your services and displaying trans positive material in your department/ward. There are a range of LGBT newspapers, internet sites and magazines you can promote your services in if appropriate in consultation with the Corporate Communications Team. You can also display LGBT or trans specific literature and posters to help demonstrate you are trans-friendly. Think about using gender neutral signs for toilets where appropriate and possible.
3. Treat trans individuals with dignity and respect. You can show respect by being relaxed and courteous, avoiding negative facial reactions, and by speaking to trans people as you would any other patient or service user. Don't make assumptions about people by their appearance.
4. If you are unsure about a person's gender identity, or how they wish to be addressed, ask. If you let the person know that you are only trying to be respectful, your question will usually be appreciated. For instance, you can ask, "What are your preferred pronouns?" or "What name would you like to be called?" In order to facilitate a good provider-patient relationship, it is important not to make assumptions about the identity, beliefs, concerns, or sexual orientation of transgender and gender non-conforming patients.
5. Make sure that colleagues are aware that discriminatory comments or behaviours are not tolerated in our Trust. There are effective policies for addressing these and all staff should be fully aware of their obligations and procedures as stated in the Equality, Diversity and Inclusion (HW019) and Resolution (HR014) policies, and that they are up-to-date with any training that is offered.
6. Remember to keep the focus on care rather than indulging in questions out of curiosity. In most healthcare situations, people's assigned sex at birth is irrelevant, although there are a few exceptions. Asking inappropriate questions about a person's assignment at birth is invasive and potentially very hurtful. You do not need to know what a person's primary or secondary characteristics are in order to place them in the appropriate area in your ward, for example. If you are not sure, ask the person themselves and respect their choices.
7. Remember that the presence of a trans person in your ward or department is not always a training opportunity for other staff. Many trans people have had hospital staff call in others to observe their bodies and the interactions between a patient and healthcare provider, often out of an impulse to train junior staff. However, like in other

situations where a patient has a rare or unusual finding, asking a patient's permission is a necessary first step before inviting in a colleague or trainee. Many trans patients wish to maintain control over who sees them unclothed. Therefore, when patients are observed without first asking their permission, it can quickly feel like an invasion of privacy and creates a barrier to respectful, competent health care. This can also have significant negative consequences on that person's likelihood to seek care in the future. Remember that it may not be easy for someone to say 'no', so it is important to create an environment where they feel safe and supported to express their wishes freely.

8. It is inappropriate to ask trans patients about their genitals if it is unrelated to their care. A person's genital status— whether one has had any lower surgery or not— does not determine that person's gender identity for the purposes of social behaviour, service provision, or legal status. Remember that trans people might be very sensitive about that area of their body. Trans women may not want to use a urine bottle and trans men might not want to use a slipper pan for example – remember that the best judge of this is the patient, so always ask for their preferences.
9. Never disclose a person's trans status or gender identity history to anyone who does not explicitly need the information for care. Just as you would not needlessly disclose a person's HIV status, a person's gender identity is not an item for gossip. Having it known that one is trans can result in ridicule and possible violence towards that individual. If disclosure is relevant to care, use discretion and inform the patient whenever possible.
10. Become knowledgeable about trans healthcare issues. Get training, stay up to date on trans issues, and know where to access resources. You can also offer a trans person an advocate to help them navigate the healthcare environment.

4. Medically addressing gender diversity

A document that offers comprehensive information is available from [NHS England](#).

<https://www.england.nhs.uk/wp-content/uploads/2018/10/Gender-identity-services-for-adults-non-surgical-interventions.pdf>

5. Non-binary gender factsheet

In addition to the needs of those colleagues or patients who are on a transition journey, our Trust is supportive of non-binary individuals. The following section of this document will help you to learn more about the unique needs of non-binary people, and how you can help to create a supportive, inclusive environment.

5.1 Definition

- *Non-binary gender* and *gender diverse* are umbrella terms used to describe all people who do not experience themselves as being male or female (i.e. within the socially constructed gender binary)
- Non-binary people may feel neither 'male' nor 'female', or may feel that they identify with both in differing degrees
- Non-binary people fall under the wider definition of *transgender* given that they have not remained in the gender they were assigned at birth. However, not all non-binary people use the term trans to describe themselves.

5.2 Extent

- According to official statistics, the proportion of the UK population who define as non-binary when given a choice between male, female and another option is 0.4%, which is 1 in 250 people (Titman, 2014). If BSUH provides care for around 800,000 people a year, the Trust will treat over 3,000 non-binary individuals
- Around a quarter to a third of trans people identify in some way outside the gender binary
- Joel et al. (2014) found that, in a general population, over a third of people said that they were to some extent the 'other' gender to that which they are generally identified as, 'both genders' and/or 'neither gender'
- YouGov found that 19% of people disagreed with the statement 'you are either a woman or a man' and a further 7% were not sure. A subsequent poll found around 20% of people placed themselves between the poles of '100% male' and '100% female' although the results of this have not been officially reported yet
- Globally many cultures recognise more than two genders (Herdt, 1993). As with sexuality, in the West binary categories dominate (male/female, gay/straight). In modern-era Western history, these have been imposed on a human experience which is not binary through colonial incursion, when the values of one culture were imposed on another culture.

5.3 Research Evidence

- McNeil et al. (2012) found that those who identify as non-binary and/or express themselves in ways that challenge binary gender face similarly high levels of mental health difficulties to binary trans people generally
- Harrison et al. (2012) found that over 40% of non-binary people had attempted suicide at some point, a third had experienced physical assault, and a sixth sexual assault based on their gender.

5.4 Specific Detriments

- A recent survey of 79 non-binary people in the UK through the *Beyond the Binary* online magazine found that the vast majority reporting feeling uncomfortable (100%) and unsafe (94%) being non-binary in the UK.
- Respondents reported the following key specific detriments involved in being non-binary (percentages in brackets refer to the proportion of people who explicitly mentioned each detriment):
- Inability to access education, work, housing, or healthcare without misgendering oneself (54%).
- Inability to have gender recorded correctly on medical, legal, educational, and other records (41%).
- Hospitals, prisons, care-homes and other institutions failing to recognise gender accurately (38%).
- Lack of accessible public facilities (toilets, changing rooms, sports facilities, etc.) (32%).
- Facing constant misgendering by others in relation to pronouns, titles, and everyday terms (32%).
- Everyday harassment, discrimination and hate crime, leading to feeling very unsafe (25%).
- Inability to access many NHS trans healthcare services due to lack of non-binary provision (21%).
- Feeling forced to present as male/female to be accepted, access work and make a living (18%).
- Intense school and/or workplace bullying due to gender expression (13%).
- Being labelled as 'difficult', 'dangerous' or 'unprofessional' when being open about gender, and the negative impact of this on employment, salary, childcare and/or accessing services (6%).
- Being forbidden in school or work settings from presenting as non-binary -no legal recourse (4%).

These issues clearly had a profound impact on mental and physical health. It was widely felt that lack of visibility in media and wider culture was a key reason why it was very difficult to be open with friends, family, neighbours, and colleagues, and why there was a lack of support and resources available

5.5 Key Policy Implications

- *Legal Recognition:* Moving towards a situation where non-binary people can have their gender recorded accurately on all official documents, and all censuses and surveys include options for non-binary gender.
- *Health:* Ensuring that trans healthcare is equally accessible to non-binary and binary trans people, and that those referring to gender services (GPs and other medical professionals) are fully aware of non-binary gender. Improving access to psychological services (and practitioner awareness) in relation to non-binary people given the toll that living in a highly binary culture takes on mental health. At BSUH, the HELP Service is available to work with employees

[\(https://nww.bsuh.nhs.uk/working-here/human-resources/advice-support-and-wellbeing/help-health-employee-learning-and-psychotherapy-services/ \)](https://nww.bsuh.nhs.uk/working-here/human-resources/advice-support-and-wellbeing/help-health-employee-learning-and-psychotherapy-services/)

- *Education*: Education at all levels about the diversity of gender experiences. Addressing any aspects of education that require people to adhere to a gender binary - if you or your team would appreciate specific training, please contact the Equality, Diversity and Inclusion Team (bsuh.equality@nhs.net) for further information
- *Criminal Justice*: Recording and addressing hate crime and harassment of non-binary people, and ensuring that police are well-trained in this area. Our Trust uses a system called Datix for recording incidents.
- *Immigration*: Ensuring that immigration services are aware of non-binary gender and the fact that other genders may be recognised in the countries of origin of refugees and asylum seekers.
- *Culture, Media and Sport*: Improving the visibility of non-binary gender, and ensuring that all public facilities are accessible to non-binary people.

5.6 References for Section 5

The material in Section 5 is drawn from the *Beyond the Binary* survey and from:

Richards, C. Bouman, W., & Barker, M. J. (Eds.) (2016). *Genderqueer and Non-Binary Genders*. Basingstoke: Palgrave Macmillan.

Barker, M. J. & Richards, C. (2015). Further genders. In C. Richards & M. Barker (Eds.) *Handbook of the Psychology of Sexuality and Gender*. pp.166-182. Basingstoke: Palgrave Macmillan.

Harrison, J., Grant, J., & Herman, J. L. (2012). *A gender not listed here: Genderqueers, gender rebels, and otherwise in the National Transgender Discrimination Survey*. Los Angeles, CA: eScholarship, University of California.

Herdt, G. H. (1993). *Third sex, third gender: Beyond sexual dimorphism in culture and history*. Zone Books New York.

Joel, D., Tarrasch, R., Berman, Z., Mukamel, M., & Ziv, E. (2013). Queering gender: Studying gender identity in 'normative' individuals. *Psychology & Sexuality*, 5(4), 291-321.

McNeil, J., Bailey, L., Ellis, S., Morton, J., & Regan, M. (2012). *Trans mental health study 2012*. www.scottishtrans.org.

Richards, C., Bouman, W. P., Seal, L., Barker, M. J., Nieder, T. O., & T'Sjoen, G. (2016). Non-binary or genderqueer genders. *International Review of Psychiatry*.

Titman, N. (2014). *How many people in the United Kingdom are nonbinary?* www.practicalandrogyny.com

TMW (2014). *Understanding non-binary people: A guide for the media*. www.transmediawatch.org/Documents/non_binary.pdf.

The following comments have been provided by Southeast Coast Ambulance Service NHS Foundation Trust to illustrate elements of the experience of non-binary people.

Comments:

“Because my identity is not legally recognised or protected, I have to choose between the emotional distress of not disclosing my identity (which makes me physically ill), or risking being disbelieved and insulted if I do disclose (which triggers self-harm).”

“I have no protection of my gender identity in the workplace, and am constantly misgendered. This has made me depressed to the point of being suicidal. Recently I didn't get a job because they asked intrusive questions about my gender. I have no legal protection.”

“I have been mocked by a group of hospital staff out on their cigarette break while I waited to be picked up from A&E – e.g. ‘What is that?’ ‘Is that a man or a woman?’ pointing and laughing.”

“Seeing the discomfort and anger when people address me initially as “sir” and then switch to “madam” because of my ambiguous appearance. That anger could easily turn physical and I would be very vulnerable. This makes me feel unsafe. Because my identity is not legally recognised or protected, I'm not confident that the police would help me.”

“Just trying to have the correct title and gender recorded is a daily struggle. Accessing gendered spaces such as dressing rooms, toilets, etc. is exceptionally dangerous and frequently requires you to misgender yourself in order to gain access to what you need.”

“Police repeatedly ignored my description of a hate crime as “transphobic” as I don't match their idea of what a trans person looks like.”

“I feel unsafe at work. I'm deeply anxious for nine hours a day. The effect on my mental health is severe on bad dysphoria days.”

“Doctor doesn't acknowledge my non-binary identity and will not refer me to a GIC.”

“There's complete lack of provision in the UK. I have no legal protection in the workplace, while others on the gender spectrum do. As a result I don't feel able to be out in my civil service job.”

“There's no support for non-binary people at my school, and all the information I have about myself is what I've found on the internet. I find it difficult to socialise with my friends because I feel like I have a big secret that I can't let anyone know about, in case they turn on me and attack me for it.”

Link to Parliament TV recording of trans* inquiry oral evidence session before W&E Committee on 13/10/15 <http://parliamentlive.tv/Event/Index/4e7f52c6-1357-43f8-98c0-af160b156b40>

6 Glossary of terms for all staff

Language is constantly evolving. The below glossary gives you an insight and explanation into a number of commonly used terms/phrases.

It will be updated periodically as necessary to ensure that it is consistently useful, relevant and informative.

6.1 General Terms

Gender - often expressed in terms of masculinity and femininity, gender is largely culturally determined and is assumed from the sex assigned at birth.

- **Cis-gender** – a person whose sex attributed at birth aligns with their gender identity and that is confirmed by them as an individual.

Sex – a term used to denote male/female/intersex variations, largely based on visible physical differences and attributes. In general, a sex attributed at birth is based on visual indicators. However, sex attributes are often (in most countries) tied to binary gender constructs – what it means to be a man/woman. So sex and gender are related, although they are not the same. It is important to remember this, because people who have intersex variations are also located on the spectrum of sex attributes and do not have sufficient measures to protect their rights and to have a say about their bodies. This is an area that is currently without legal protection, which makes intersex individuals vulnerable to medical interventions without consent.

Intersex - Intersex people are born with physical sex characteristics that don't fit medical and social norms for female or male bodies. Intersex traits are natural manifestations of human bodily diversity. Intersex variations is not the same as gender identity (who you are – male, female, gender non-conforming, non-binary, transgender) or sexual orientation (who you are attracted to – heterosexual, bisexual, lesbian, gay, asexual, pansexual). People born with intersex variations have the same diversity in sexual orientation and gender identity as everyone else. While LGBT activists and Intersex activists may work together, it is important to be clear about the difference and prevent misunderstanding.

Outed - When a lesbian, gay, bi or trans person's sexual orientation or gender identity is disclosed to someone else without their consent.

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.

Primary or secondary characteristics – this phrase relates to sex characteristics. Primary characteristics refer to the reproductive organs. Secondary characteristics refer to other characteristic indicators of a person's sex, such as the presence of body hair or distribution of body fat.

6.2 Terms to do with emotional, romantic and/or sexual orientation

LGBTQ+ - The acronym for lesbian, gay, bi, trans, and queer. The '+' includes anyone who doesn't specifically identify with any of those terms to ensure that all of the Trust's diverse staff and patients feel included.

Asexual – someone who is heterosexual, gay, lesbian, bisexual or pansexual but is not physically attracted/barely physically attracted to anyone.

Bi - an emotional, romantic and/or sexual orientation towards more than one gender. The term used to describe those who were attracted to others of the same gender and opposite gender. The term may be used more widely these days and might include those who are pansexual (attracted to all genders). In the past, bi individuals may have been more commonly referred to as 'bisexual'.

Gay – Historically, this referred to a man who has an emotional, romantic and/or sexual orientation towards men. More recently, it has become a generic term for lesbian and gay sexuality - some women define themselves as gay rather than lesbian.

Heterosexual / straight – refers to a person who has a romantic, emotional and/or sexual attraction towards someone of the opposite gender to themselves (e.g. a woman being attracted to a man, or a man being attracted to a woman).

Homosexual – This is a medicalised term used to describe a person who has an emotional romantic and/or sexual orientation towards someone of the same gender as themselves. This term has fallen out of use as homosexuality has been depathologised. Please use the term gay instead as a matter of respect.

Homophobia - The fear or dislike of someone, based on prejudice or negative attitudes, beliefs or views about lesbian, gay or bi people. Homophobic bullying may be targeted at people who are, or who are perceived to be, lesbian, gay or bi.

Lesbian - Refers to a woman who has an emotional, romantic and/or sexual orientation towards women.

Pansexual – Pansexuality is a sexual orientation that is based on the notion that someone is attracted to the inherent essence of a person and therefore their gender identity, sex, gender representation or anything else is irrelevant.

Queer – Historically, this term has been used as a slur and to attack people of minority gender and sexual identities. However, sections of the LGBTQ+ population reclaimed the word in the 1980s, and it is used in some public institutions. Unless you identify yourself as queer, you should not use the term as it can be difficult to understand the difference between it being used as a hateful slur and source of harassment, and as a term of empowerment.

Questioning -The process of exploring your own sexual orientation and/or gender identity.

Sexual orientation – who you are attracted to. You could be attracted to the same gender (lesbian or gay), the opposite gender (heterosexual), the same or other binary gender (bi), people across the gender spectrum (pansexual) or no-one. Remember that for a lot of people, sexual orientation is not static – it can shift over time. Also remember that not all people are comfortable using the terms lesbian/gay/bisexual even if they have relationships with those of the same gender – they may choose to use terms such as 'same gender loving'.

6.3 Terms specifically relevant to trans individuals (including non-binary people) and their journeys

Deadnaming - Calling someone by their birth name after they have changed their name. This term is often associated with trans people who have changed their name as part of their transition. Intentional deadnaming is a form of harassment and abuse and can trigger dysphoria in the person affected.

Gender Dysphoria – Used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity. This is also the clinical diagnosis for someone who doesn't feel comfortable with the sex they were assigned at birth.

Gender expression – this is how a person presents themselves on any given day in terms of the clothes they wear for example, how they speak, how they walk and so forth. Gender expression does not always match gender identity.

Gender identity – how a person sees themselves/feels in terms of social constructions of what it means to be a man/woman and sometimes, their own feelings about what being a man/woman actually relates to. Gender terms in common use include trans (see above), non-binary (a different conception of gender that does not sit within the man/woman binary), gender diverse (outside the gender norms) or gender fluid (a gender identity that shifts and changes over time/place) or gender non-conforming (a negation of the gender binary).

Remember that some trans people who choose to go through a gender affirmation process may identify as a binary gender – man or a woman – at the end of the process or at different points in their journey or at the very start. They may no longer choose to use the term trans or they may never have used the term trans. They may not want to disclose their trans journey and this must be respected. It is against the law to out someone as trans and nor should you expect all trans people to want to talk about their journeys.

Gender reassignment - also referred to as gender affirmation or gender confirmation. 'Gender reassignment' usually means to undergo some sort of medical procedures which change the body to align with a person's gender, but it can also mean changing names, pronouns, dressing differently and for a person to live in their self-identified gender. Gender reassignment is a characteristic that is protected by the Equality Act 2010, and it is further interpreted in the Equality Act 2010 approved code of practice.

Gender Recognition Certificate (GRC) - This enables trans people to be legally recognised in an affirmed gender and to be issued with a new birth certificate. Not all trans people will apply for a GRC and at the time of writing they have to be over 18 to apply. They do not need a GRC to change their gender markers at work or to legally change their gender on other documents such as a passport

Genuine Occupational Qualification (GOQ/Genuine Occupational Requirement (GOR)
Exceptions to the law regarding discrimination are permitted in cases where a protected characteristic is genuinely needed for them to be able to carry out their duties for a specific job. What employers may legitimately claim as a GOQ or GOR for a job varies according to the characteristic being discriminated on. However, in general the onus is on the employer to demonstrate that the characteristic concerned is a genuine requirement (or intrinsic) for the job, crucial to the job's performance, and that it is proportionate to apply the requirement in the case in question. For example, it would be a GOQ/GOR to discriminate in favour of women when recruiting workers to work in a refuge for abused women. Due to the

experiences of the clientele, it would be deemed inappropriate for a man to be within the vicinity unsupervised.

Misgendering – where a person incorrectly refers to another person using the gender they were assigned at birth, rather than their real gender.

Passing - If someone is regarded, at a glance, to be a cisgender man or cisgender woman. This might include physical gender cues (hair or clothing) and/or behaviour which is historically or culturally associated with a particular gender.

Trans (transgender) – a person whose sex attributed at birth does not match their gender identity. When we are born a medical professional attributes our sex based on outward appearance. But that does not always mean our gender aligns with it. Being transgender is not a choice. Remember that not all people in this situation identify as trans or seek gender affirmation interventions. Sometimes the trans journey is a life-long process – there is not always an end point. (Note: please do not use the terms ‘transsexual’, ‘transvestite’, ‘sex change’ ‘gender identity disorder’ – these are outdated and considered offensive and derogatory by many trans people and allies.)

Transphobia - The fear or dislike of someone based on the fact they are trans, including the denial/refusal to accept their gender identity.

A hate crime is when transphobia is acted out against someone and it amounts to a criminal offence. Any form of discrimination and hate crime is not tolerated within the Trust, and there is a process for reporting such incidents. It is important that behaviour of this nature is reported, this will ensure that the incident/crime is investigated appropriately and the right level of support can be offered to the victim and bystanders. All managers must be aware of how to report hate crimes. If you are unclear of the process contact BSUH.Equality@NHS.net.

Transition - used to describe the point at which a permanent change of gender role is undertaken, in all spheres of life – in the family, at work, in leisure pursuits and in society generally. Some people make this change gradually, however, others emerge much quicker.

7 Appendices (useful for all staff)

7.1 - Legal Frameworks – in-depth explanations

7.1.1 Equality Act 2010 (EqA)

The EqA was enacted in October 2010, and aimed to simplify and harmonise protection offered to people from discrimination, harassment and victimisation (public sector organisations also have the duty to promote equality and good relations between all protected characteristics).

Protection from discrimination in the workplace and in the provision of goods, facilities and services is offered to people who intend to undergo, are undergoing or have undergone a process (or part of a process) to reassign that person's gender by changing physiological or other attributes of gender (Equality Act: Part 2, Chapter 1, Paragraph 7). The process described in the EqA is often known as a "transition". There is no requirement for the person to be under medical supervision (as under previous legislation), and covers those who associate with trans people, and those who are perceived to be trans.

However, people who may present or express their gender that is different to the gender attributed to them at birth (for reasons not relating specifically to gender variance) are not protected by the EqA. Those who are non-binary may strictly speaking only be covered by the Act when the discrimination is by perception under current legislation. Our Trust expects all staff, patients and the public to be treated fairly, equally and in a dignified fashion – behaviour falling short of this standard risks being addressed under the Resolution Policy (HR014).

Remember: it is unlawful to ask to see a Gender Recognition Certificate as evidence of someone being trans.

Under EqA, trans people should expect employers, colleagues, patients, service users and contracted suppliers to refrain from:

- Verbal, physical or psychological discriminatory behaviour.
- Repeated bullying, harassment or creating a hostile environment by using transphobic language or signifiers (whether or not this is in the presence of a trans person)
- Victimising a person who has made a complaint about a transphobic incident
Punishing and penalising someone who takes time off for treatment associated with transitioning or gender reassignment or gender affirmation
- Compromising the privacy and dignity of trans people
- Using 'dead names' (previous name), revealing a person's previous gender or publishing information about their trans status without their consent
- Deliberately misgendering a person, and referring to them in a way that does not reflect their gender identity. While it can happen accidentally, it can also be done with malicious intent. It can be extremely hurtful and trigger unwanted memories and in some people it can lead to a decline in mental health

- Distributing inflammatory literature and material that dismisses trans lives and trans healthcare needs.

Remember:

- All BSUH employees need to work together to ensure that measures are in place to protect and assist a person who is transitioning
- Employees must also respect and treat each other as individuals and not make assumptions that all trans people have the same needs. Trans people are individuals in their own right and, like everyone else, have many different aspects to their lives and identities that are not related to their trans status
- Co-workers must be knowledgeable that protection from discrimination is not dependent on whether or not a trans person (staff or patients) has a Gender Recognition Certificate.

7.1.2 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. A person applying for a gender recognition certificate needs to demonstrate to the Panel that:

- They have or have had gender dysphoria and have lived in their acquired gender for two years and that they intend to continue to live in their acquired gender until death. If an applicant has been recognised under the law of another country or territory as having changed gender, then the Panel only needs to be satisfied that the other country has been approved by the Secretary of State.

Once a GRC has been issued, there are increased privacy requirements for documentation/records that reveal a previous gender status, and any person who has learned of this in their 'official capacity' and relays this information without prior consent/permission from the individual concerned will be conducting a criminal act which could be liable to prosecution and a substantial fine. This applies to areas concerning workforce and service delivery.

Under the Marriage (Same Sex Couples) Act 2013, there are specific conditions that need to be met for the provision of a 'full' GRC if the applicant is in a legally recognised same-sex relationship.

The lack of a GRC must not be used to disadvantage a trans person. Asking to see a GRC is nearly always inappropriate; it may be regarded as harassment, and negates one of its central purposes, that is, to provide privacy. Nor should a birth certificate be required. Identification of patients and staff can usually be provided by passports or driving licences.

A GRC is not needed in order to change one's name, pronouns, or gender of presentation at work/or accessing a public service. Trans people will have spent an extended period of time living in their affirmed gender before being granted their GRC. Transitioning and continuing to work in their new gender is, for many trans people, an essential part of their transition process

At the time of writing the GRA is being reformed by the Government. The main areas being supported for reform are a GRA that:

- Requires no medical diagnosis or presentation of evidence for trans people to get their identity legally recognised
- Recognises non-binary identities
- Gives all trans people, including 16 to 17 year olds, the right to self-determination, through a much simpler and more streamlined administrative process.

7.1.3 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.

7.1.4 Data Protection

Under the General Data Protection Regulation of 2018, trans status and details relating to an employee'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 employee gives explicit consent or where it is necessary for carrying out rights and obligations under employment law.

It is important to think about who has access to employee records and how much information actually needs to be stored, and for how long.

Remember: information about a person's previous gender is incredibly sensitive and access to that information should be restricted.

Employers also have a duty to keep accurate records, so it is important to ensure that if an employee undergoes gender transition, that their records are updated as soon as possible.

Contact the BSUH Information Governance Team if you require additional guidance – their details are available through InfoNet. <https://www.bsuh.nhs.uk/working-here/information-governance/>

7.2 Disclosure and Barring Service (DBS) Checks – formerly Criminal Records Bureau (CRB)

The Disclosure and Barring Service provides a service called 'Disclosure'. By providing wider access to criminal record information, the DBS helps employers in the public, private and voluntary sectors identify candidates who may be unsuitable for certain work, especially in positions that involve contact with children or vulnerable people.

To enable the bureau to do its job, the DBS has to be aware of any previous names and/or gender of the prospective employees. However, the bureau has devised a process which allows trans applicants to pass details on to the DBS without first revealing them to the employer.

The separate application procedure allows trans applicants to exclude previous names from the application form (ensuring protection from disclosing gender identity history from the

employer). However, applicants will still be required to send details of their previous identity in a separate letter directly to the 'Sensitive Application Team' within the DBS. The bureau will then check the data sources held against both current and previous names.

This avoids the need for disclosure about gender history or former name to the employer or voluntary body at the application stage, but allows the DBS to carry out the requisite checks against any previously held identities.

It should be noted that where a conviction or (in Enhanced Disclosure cases) other relevant information has been recorded in a previous name, this will be highlighted on the disclosure and as such details of any previous identity may be revealed. Where there are no convictions recorded, the details of any previous names that have been provided directly to the DBS will not be revealed in the disclosure.

Trans applicants wishing to take advantage of this separate procedure should contact the DBS for further details. Please look at their website:

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

7.3 Recruitment Agencies – how to ensure that they support our development of a diverse, inclusive workforce

It is unlawful for a recruitment agency to discriminate against a trans person:

- in the terms of which it offers to provide any of its services, or
- by refusing or deliberately omitting to provide services, or
- in the way in which it provides any of services
- Unless one of the exceptions under the Equality Act 2010 applies, such as a genuine occupational qualification (GOQ – see glossary). This may in practice exclude trans applicants from applying for a post where a gender GOQ condition is imposed.
- If the employment agency has been assured by the employer that a vacancy is covered by a GOQ and this turns out to be wrong, the agency has a defence if it can prove that:
 - it acted in reliance on a statement by the employer that its action would not be lawful, and
 - that it was reasonable for it to rely on the statement
- It is a criminal offence punishable by a fine, to knowingly or recklessly make a statement that is generally false or misleading.

Employment agencies are not under any legal obligation to disclose information about the gender identity status of an individual, and agencies should not provide such information without the individual's prior consent. The question should only arise if there is a relevant GOQ relating to the particular job.

7.4 Example email from a trans colleague to their team

Dear Colleagues,

I am writing to you because I know that it would not be possible to speak to you all individually. I wanted to tell you my news personally, rather than leaving you to hear it from someone else. There are going to be some big changes in my life that I would like to share with you.

I have been seeing a specialist doctor for a while, who confirms what I have recognised for many years. I am a man, and I always have been. Because I do not look like a man, I have lived with a feeling of great discomfort, which I have tried to ignore, repress or overcome. This uncomfortable experience is called gender dysphoria. Most of you will have heard of people in my situation being described as transgender or just trans.

I have reached a point where I cannot continue in my old gender role. I shall be away for three weeks and will return in September. From then on I will be living and working as a man. I shall continue to do the same job. In that respect nothing will change. My appearance and the clothes I wear and how I present will change, and I will no longer be known as Susan but as Michael. Using new pronouns can take a while to get used to, but I am sure I can count on you all to refer to me as 'he'.

We have great values in our organisation; we celebrate diversity and we treat each other with respect, so I am confident that all of you will give me the support that I need through this new phase of my life.

Please ask me if you would like any resources about being trans or access them from the manager.

Regards

S/Michael

7.5 Example Inclusion Paragraph

BSUH NHS Trust has a robust employment policy and it is committed to providing a safe, inclusive working environment for all employees. We support our staff, treat them with respect and have due regard for their privacy and wellbeing, regardless of their age, disability, gender identity (trans, non-binary, gender non-conforming), marriage or civil partnership status, pregnancy or maternity, race (nationality, skin colour, ethnicity), religion or belief, sex or sexual orientation.