



**Supporting Trans
Service Users**

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1. Introduction

NHS Ayrshire & Arran is committed to providing person-centred, safe and effective services for the community it serves. Equality and diversity are fundamental to our organisational values of **caring, safe and respectful** which will support us to achieve this.

This policy sets out NHS Ayrshire & Arran's roles and responsibilities as a service provider to patients who have proposed, started or completed a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex.

As gender reassignment is a protected characteristic under the Equality Act 2010 we must ensure that people are free from discrimination or prejudice as a result of gender reassignment. We also recognise that being trans is only one aspect of an individual's identity and therefore recognise each person will have different needs and as such, a person-centred approach will be taken.

This policy has been adapted from the NHS Greater Glasgow and Clyde Gender Reassignment Policy and developed through consultation with trans representatives and the Scottish Trans Alliance.

The Policy does not specifically apply to specialist gender reassignment services which are subject to the nationally agreed Gender Reassignment Protocol (GRP) (Appendix 1). This policy directs staff in the provision of inclusive and sensitive services for patients accessing any of our mainstream services.

1.1 NHS Ayrshire & Arran's Approach

NHS Ayrshire & Arran recognises that trans people are entitled to fair and equal access to all NHS services. A person's gender status will not exclude them from the high standards of service provision expected from NHS Ayrshire & Arran.

NHS Ayrshire & Arran recognises:

- The broad spectrum of gender diversity within society and that traditional gender stereotypes are inadequate in reflecting the lives of service users.
- That people have the right to access NHS medical gender reassignment provision and that such provision can be a vital life-saving treatment for trans people experiencing intense gender dysphoria.
- That people have the right to live with dignity and privacy in the gender with which they identify, and that there must be no exceptions to this when a trans person is accessing our services.

1.2 Scope of this policy

The policy applies to all NHS Ayrshire & Arran employees. Staff will be expected to comply with the policy at all times and positively challenge colleagues and users of services who act in a manner that breaches legal and wider organisational commitments to equality. Legal duties as a health care service provider are outlined in Appendix 2 to this policy.

1.3 Equality and Diversity

NHS Ayrshire & Arran wholeheartedly supports the principle of equal opportunities as outlined by the Scotland Act which supports Equalities and Human Rights legislation. It understands that the key to this is recognising and valuing difference. The Equality Act 2010 replaced previous anti-discrimination laws with a single Act and ensures that everyone who is protected under law from discrimination, harassment or victimisation is afforded the same level of protection.

The Equality Act 2010 introduced the concept of nine protected characteristics which are Age; Disability; Gender Reassignment; Marriage and Civil Partnership; Pregnancy and Maternity; Race; Religion and Belief; Sex and Sexual Orientation.

NHS Ayrshire & Arran's policies strive to ensure that individuals are treated in a fair and consistent manner, making reasonable adjustments where necessary.

In addition staff must take account of adults and children who may be considered at risk of harm and unable to safeguard themselves. Staff should seek and follow organisational guidance for Child Protection and Adult Support and Protection.

1.4 Policy Review

This is NHS Ayrshire & Arran's first Trans Policy and will be subject to review in 12 months of implementation to ensure it fulfils its operational use as a tool for practice and as a source of guidance for the organisation.

The policy will evolve through testing against real situations and will grow in its utility through a process of feedback from the wider system. As such, all queries relating to this policy should be directed to:

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2. Aims of the Trans Policy

This protocol applies to all staff, patients and members of the public detailing how a trans person should be treated in a dignified, non-discriminatory way. Its aims are to support the organisation in its delivery of inclusive services and ensure that it does not breach the Equality Act 2010.

Under this legislation it states that a trans person no longer has to be under medical supervision or have a gender recognition certificate to prove that they have the protected characteristic of gender reassignment. For example, a trans person who simply starts using different pronouns (she, he, and they) is protected by the Equality Act regardless of whether or not they wish to take any hormones or have any surgeries. They must be treated in accordance with their self-declared gender identity.

NHS Ayrshire & Arran will work to ensure any trans patient will:

- be able to use or visit services without fear of prejudice, discrimination or harassment;
- be treated sensitively and inclusively by staff who are confident and competent in delivering services to them;
- receive information regarding their rights to equality of access of service; and
- will not experience discrimination or unfair treatment due to any other protected characteristic in addition to gender reassignment.

3. What does trans mean?

Trans is an umbrella term for people who, for whatever reason, feel their gender identity or gender expression differs from their sex assigned at birth.

While the organisation is committed to understanding the context of trans issues within a social model of health, for the purposes of this policy NHS Ayrshire & Arran will enact the definition for gender reassignment outlined within the Equality Act 2010. The Act defines gender reassignment as:

‘where a person has proposed, started or completed a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex’. The definition of gender reassignment no longer requires the person to be under medical supervision to be protected by the law. A transsexual person also has the protected characteristic of gender reassignment

A small number of people may not identify with a binary (male/female) concept of gender and instead identify as having an androgynous non-binary gender or as having no gender. Some of them may experience their gender identity as fluid and changeable. Where this is the case, discussions relating to provision of services must take place with this broader understanding of gender and gender identity.

A detailed explanation of trans terminology is included as Appendix 3 to this document.

4. General NHS Care

Trans people will receive equitable access to all NHS Ayrshire & Arran services. The organisation understands that a person's expressed gender identity will not exclude them from the high standards of care expected.

4.1 Accessing Services

Where services have been notified of a trans patient every effort must be made to ensure they are addressed using the new personal details provided in all forms of communication. Continued use of previous name and gender title (Mr, Ms Mrs etc.) is insensitive, distressing and may be in breach of legislation. In all respects, trans people will be addressed in line with their current gender identity. Where automated systems exist for contacting patients, system administrators must be contacted to make the required adjustments to recorded personal details.

4.2 In-Patient Accommodation

Where in-patient accommodation remains configured by sex (female/male only wards), trans patients will be offered accommodation that matches the **gender in which they are currently living**. For example, trans women will not be placed on male wards. To do so would be insensitive and may constitute a breach of the Equality Act 2010 and incur both financial and reputational risk to NHS Ayrshire & Arran.

Healthcare professionals should ensure that trans people receiving hospital care have access to the necessary privacy and facilities to maintain post-surgical regimes. For example, a post-operative trans women will need to dilate three times daily for six to twelve months after surgery decreasing to twice monthly over a further 12 months.

However, some male or female only wards are configured to offer specialist after care treatment for sex-specific issues. For example, a man requiring a prostatectomy may receive post surgical care in a male urology ward and be treated by a specialist nursing team trained to respond to any post operative complications that may arise.

Many trans people will require this type of post surgical care for clinical issues commonly associated with their previous gender – for example, a trans man may require a hysterectomy. Where these cases occur, patients must be involved in all discussions relating to appropriate accommodation and clinical/surgical teams will be required to evidence all reasonable steps have been taken to meet the needs of the patient. In the event that clinical risk clearly outweighs choice of gender-sensitive accommodation, the patient must be involved in discussions in advance of admission.

Where trans patients require immediate inpatient stay following presentation via an unplanned care route, it is important that there is clear communication between the emergency team and the receiving ward regarding the needs of the patient. This

must be done sensitively and within the context of The Gender Recognition (Disclosure of Information) (Scotland) Order 2005 (see point 4.4).

Members of staff with any concerns regarding accommodation for trans patients should discuss the matter with their line manager.

Appendix 4 details a case study highlighting best staff practice when a trans person requires in-patient accommodation. Appendix 5 provides a planned inpatient pathway and appendix 6 provides an unplanned patient pathway.

4.3 Sex-specific Services

Services notified of a change of gender for an individual, will make alternative arrangements for provision of sex-specific services. For example, trans men should not be invited to 'Well Woman' clinics. It is inappropriate and insensitive and may breach legislation. Trans men may still be required to attend for sex-specific services (cervical smears or mammograms). Where this happens, the patient must be involved in determining the most appropriate way to communicate information - it may be to send an individual invitation and ensure that details are removed or amended on mailing databases to avoid future distress and confusion.

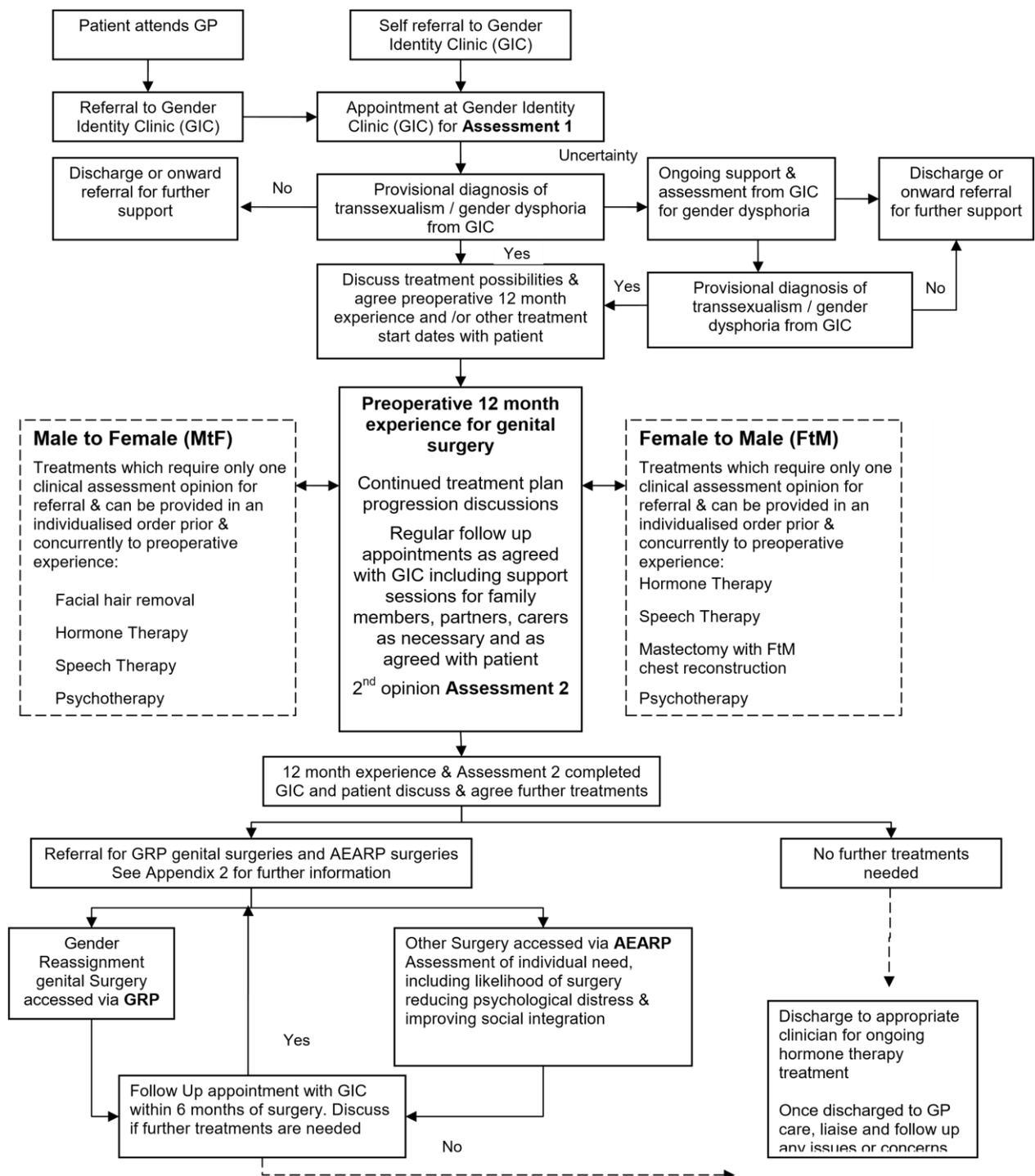
4.4 Trans Identity Disclosure

In all matters, members of staff should be aware that disclosing a person's gender reassignment status to a third party without first gaining their express permission to do so may constitute a breach of legislation.

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

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

When implementing the protocol, the patient should be a full participant in decisions about their healthcare and wellbeing and be given any information or support that they need in order to do so.



Legal Context

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

Equality Act 2010

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

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

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

Legislative Definitions of Unlawful Behaviour Relating to Gender Reassignment

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

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

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

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

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

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

Equality Act (2010) (Specific Duties) (Scotland) (2012)

The Equality Act 2010 places a statutory duty on all public sector organisations, when carrying out their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- Advance equality of opportunity between people who have the protected characteristic of gender reassignment and those who do not ; and
- Foster good relations between people who have the protected characteristic of gender reassignment and those who do not.

The Act places a responsibility on statutory services to pro-actively promote non-discriminatory practice, moving the focus away from an historic reactive complaints-orientated approach. This means services must invest significant resource in ensuring functions (including promotion of services) are fit for purpose and meet the needs of diverse groups through an intensive process of planning, development and reflection/assessment.

Gender Recognition Act 2004

This Act of Parliament gave legal recognition to trans people following a permanent change of gender. It sets out the process for individuals to apply for a Gender Recognition Certificate (GRC) after being assessed by a medical gender specialist doctor as having gender dysphoria and providing confirmation that they have been living full-time in their acquired gender for at least two years and intend to remain living in their acquired gender for the rest of their life. It is not necessary for someone to have undergone genital surgery to receive a full GRC.

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

It is very important to note that employers and service providers must change on first request by an individual, their name and gendered title (i.e. Mr, Miss, Ms) on all their employment, medical and other records, identity badges and future correspondence. All that the individual needs to state in their request is that they are starting a process of gender reassignment to live permanently in their acquired gender. They do not need to show a Gender Recognition Certificate in order to change over their day-to-day documentation or to use the toilet facilities of their acquired gender. Indeed, as it is necessary to live fully in the acquired gender for at least two years before applying for a Gender Recognition Certificate, a refusal by an employer or service provider to allow these changes at the start of an individual's gender

reassignment process would unfairly prevent that individual from later being able to apply for a Gender Recognition Certificate and consequently would be discriminatory.

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

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

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

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

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

Where a patient is capable of giving consent to aspects of their medical treatment, then health professionals **MUST** obtain the consent of the patient if it is clinically desirable to disclose the patient's gender history to another health professional. Unless there is clear clinical need for such disclosure, it should be avoided.

What Does Trans Mean?

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

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

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

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

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

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

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

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

Transsexual people consistently self-identify as a different gender from the gender they were labelled at birth based on their biological sex and therefore experience an intense need to transition from male to female (trans woman) or from female to male

(trans man). This may or may not involve hormone treatment or undergoing various surgical procedures.

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

Gender dysphoria is a recognised medical issue for which gender reassignment treatment is available on the National Health Service in Scotland. Gender Dysphoria is distress, unhappiness and discomfort experienced by someone about their biological sex not fully matching their gender identity. Around 1 in 11,500 people in Scotland seek NHS medical assistance to undergo a process of gender reassignment. Other types of trans people may also experience various degrees of gender dysphoria, especially when unable to fully express their gender identity.

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

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

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

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

General Information

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

eliminating discrimination and harassment on grounds of gender reassignment in line with our duty as set out in the Equality Act (2010).

NHS Ayrshire & Arran has voluntarily adopted best practice (as recommended by a number of Scottish equality organisations and trade unions) to promote equality on the grounds of gender identity and gender expression and to eliminate transphobic discrimination and harassment for all employees and service users, regardless of whether or not they intend to undergo gender reassignment. Details of the types of discriminatory behaviour often experienced by Trans people are included within Appendix 7 of this policy.

Practice Case Study

Patients with the protected characteristic of gender reassignment are protected by law in terms of their rights to receive care that meets their current gender identity. NHS staff must be aware of their legal responsibilities in helping this to happen and understand the significant issues faced by patients in terms of receiving equitable and sensitive services.

The following case studies represent scenarios experienced in health settings.

Concerns expressed by many NHS staff specifically relate to inpatient accommodation for trans patients, normally where accommodation is segregated by sex (female and male only wards). These concerns tend to fall into three areas – identifying the most appropriate accommodation for a trans person, the potential hostility of other male or female patients towards the trans patient and the fear that sharing a ward with a trans person will in some way cause upset to cis-gender (non-trans) patients.

Often, where inpatient care is planned, ward managers opt to accommodate trans patients in single-occupancy rooms where available to avoid potential difficulties. Adopting this position as a default is in itself discriminatory. NHS Ayrshire & Arran does not operate services on a gender approval spectrum, for example, if you don't fit a female or male stereotype in terms of appearance you will be removed from public view. We would not operate this way for black, disabled, elderly or lesbian, gay or bi-sexual patients and it is not acceptable to consider this as an option for trans patients.

Inpatient Scenario:

A nurse is summoned to a patient's bed in a female ward. The patient appears to be agitated. When asked what's concerning her, the woman explains she didn't expect to be sharing the ward with a man and points to the bed opposite. She states it's inappropriate to have 'him' in the ward with the other women. She tells the nurse she can't relax and wants 'him' removed from the ward. If this doesn't happen she'll make a formal complaint – the hospital has a duty of care to look after her and they're not taking this seriously by putting her in this situation.

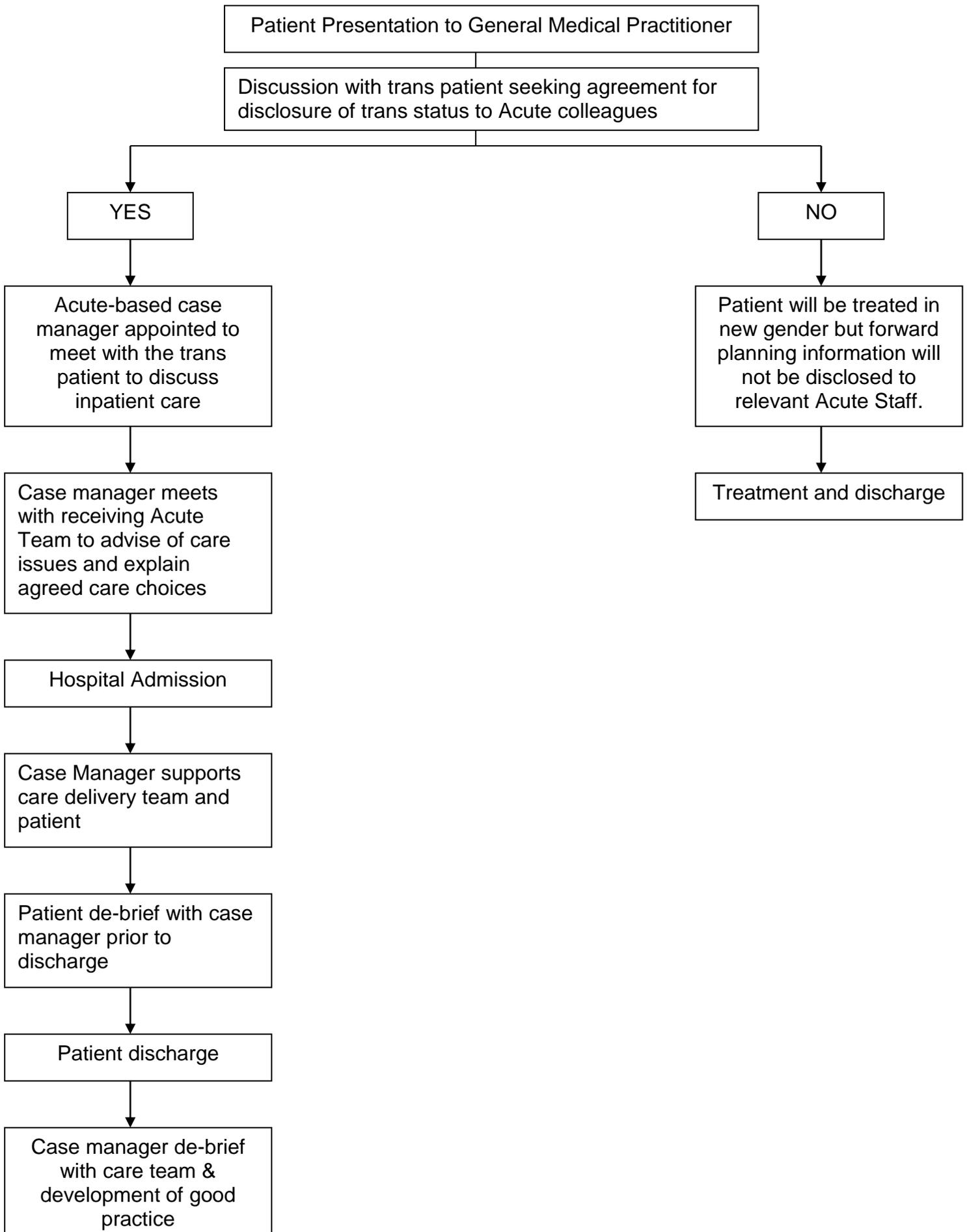
The nurse listens and tells the woman she'll see what she can do. She says that she understands having a trans person on the ward will be upsetting to other women and leaves to talk with a senior colleague about the matter.

The response to the patient's concern isn't appropriate and breaches legislative protection afforded to trans people. Someone's trans status can not be disclosed to a third party without the express permission of the trans person and the assumption that others in the ward will feel uncomfortable is unfounded. In this instance there is no need to either disclose or seek permission to disclose gender identity. The nurse should work to allay the patient's concerns – it would be appropriate to re-iterate that the ward is indeed female only and that there are no men present. Her duty of care extends to protect patients from harassment and should the woman continue to make demands about the removal of the trans patient and be vocal in the ward it

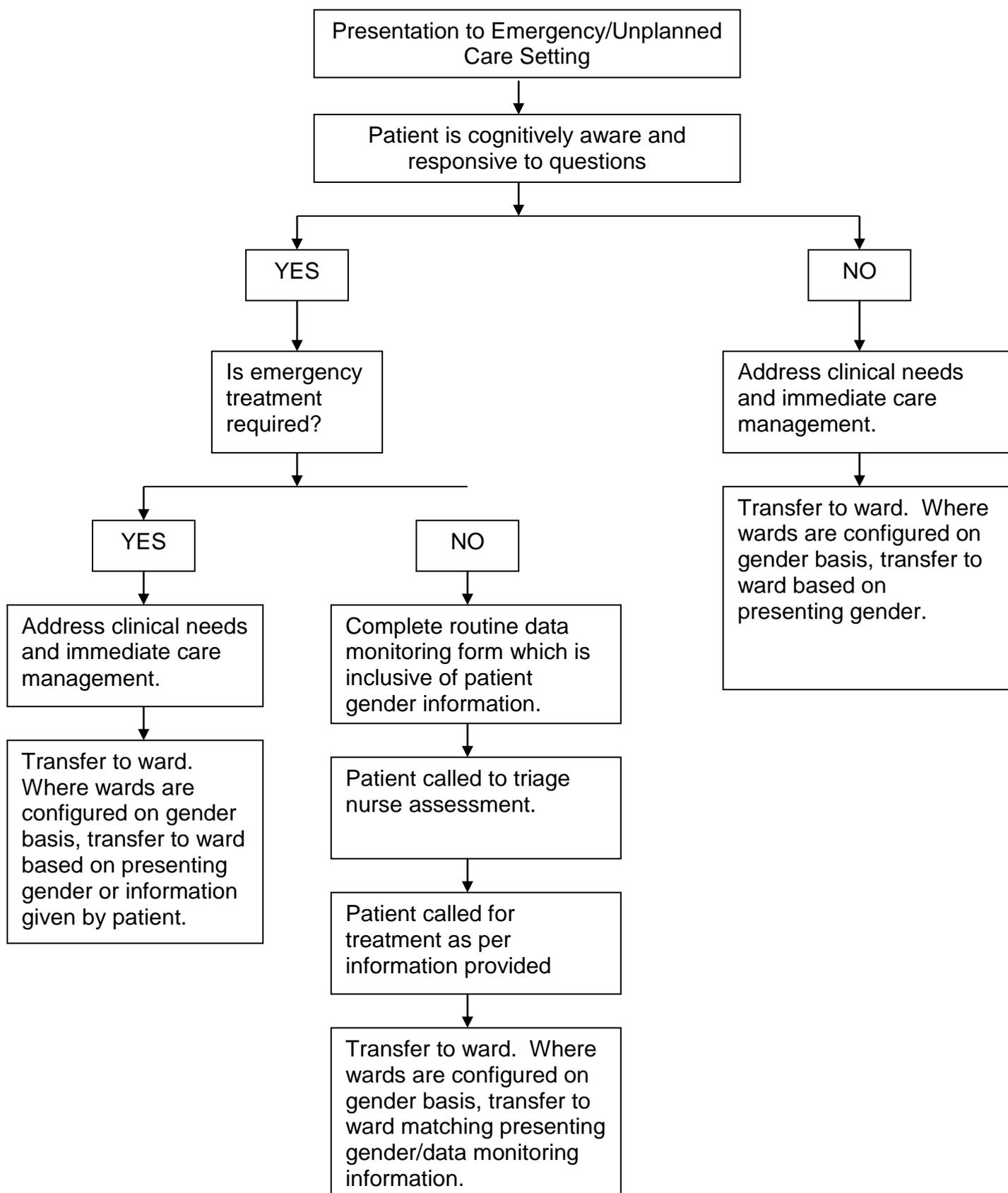
would be appropriate to remind her of this. Ultimately it may be the complainant who is required to be removed. The nurse should check with the trans patient and sensitively ask if everything is ok. If the trans patient has heard any of the discussions it is imperative that she is given every assurance that the matter will be dealt with. If the trans patient is visibly upset and there is spare capacity, it would be appropriate to offer her the option to move to a single room, though this must be with the interests of the patient in mind rather than conflict avoidance.

General appreciation of trans issues is relatively low within our communities and often this is used as a rationale for behaviour that is essentially transphobic. If a white woman complained to a nurse about sharing a ward with a black patient or a heterosexual male complained about being in a ward with a gay man, we would expect our staff to act in a manor that deals with the expressed behaviour immediately.

Trans Planned Patient Pathway



Trans Unplanned Patient Pathway into Inpatient Care



Health Outcomes for Trans People

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

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

Discriminatory practice

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

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

Trans people are afforded additional protection in law through application of the Offences (Aggravation By Prejudice) (Scotland) Act 2009. The Act allows for enhanced sentencing when an offence against a trans person is motivated by ill-will on the grounds of their gender identity.