

Supporting Transgender Staff in the Workplace

Protocol & Guidance

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1. Introduction

NHS Forth Valley is committed to leading and promoting Equality and Diversity, equal opportunities and supporting human rights in terms of the provision of health services for the community it serves and in its practice as an exemplar employer.

This protocol and guidance sets out NHS Forth Valley's responsibilities as an employer of transgender people.

As gender reassignment is a protected characteristic under the Equality Act 2010 we must ensure that people are not discriminated against or disadvantaged by service delivery or prejudice of NHS Forth Valley's employees, other patients or the public.

We also recognise that every person has a different experience of their gender and therefore it is not a case of "one size fits all". Each person will have different needs and as such, a person-centred approach will be taken.

1.1 NHS Forth Valley's Approach

NHS Forth Valley recognises that transgender 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 employment expected from NHS Forth Valley.

NHS Forth Valley recognises:

- The broad spectrum of gender diversity within society and that traditional gender stereotypes are inadequate in reflecting the lives of employees and 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 transgender 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 transgender person is an employee or using services and facilities.

For a member of staff who is transitioning in our workplace, any changes to working conditions or access to facilities should have a negotiated approach between the staff member and their manager.

This protocol therefore needs to be considered alongside other NHS Forth Valley policies such as, [Bullying & Harassment Policy](#), [Attendance Policy](#), [Uniform Policy and Dress Code](#) and [Hate Incident Protocol](#) etc

1.2 Scope of the Protocol

The Protocol applies to all NHS Forth Valley employees. Staff will be expected to comply with the Protocol at all times and positively challenge colleagues and users of services who act in a manner that breaches the legal aspects of NHS Forth Valley's responsibilities.

A glossary of terms is available in **Appendix B** and the organisation's legal duties as health care employers are outlined in **Appendix C**.

1.3 Protocol Review

The Forth Valley 'Supporting Transgender Staff in the Workplace Protocol will be subject to review in 36 months time to ensure it fulfils its operational use as a tool for practice and as a source of guidance for the organisation.

This protocol has been updated in partnership with Divisional/Board Managers and staff representatives through a partnership working group. This policy will be formally reviewed in 3 years by the HR Policy Group or as requested by the Area Partnership Forum/Staff Governance Committee.

The Protocol 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 Protocol should be directed to: HR Department Tel No: 01324 618345 or Equality Manager 01324 614653

2. Aims of the Supporting Transgender Staff in the Workplace Protocol and Guidance

This protocol applies to all staff, patients and members of the public detailing how a transgender 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 transgender 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 transgender person who simply starts using different pronouns for example '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.

Discrimination against a transgender person should be challenged, whether the discrimination stems from staff, patients or the public.

Priorities:

- We are committed to ensuring equality of opportunity for transgender employees.
- All transgender employees have legal rights that are set out in **Appendix C** of the Protocol.
- The fundamental directive of the protocol is that transgender people will be treated in their self-identified gender at all times.
- The protocol will support legal compliance in NHS Forth Valley's responsibilities as an employer of transgender people.

To support work in these areas, NHS Forth Valley will:-

- Ensure transgender employees can work in an environment without fear of prejudice, discrimination or harassment
- Provide management and staff with guidance on the rights of transgender employees and the legal context for this
- Continue to develop their Transgender Awareness via LGBTI e-learning available to staff as part of their KSF Core 6 Equality and Diversity competency requirements.

- Those managers and staff not under Knowledge and Skills (KSF) Framework should also be encouraged to complete same.
- Provide information to transgender people regarding their rights to equality of access of service and employment opportunities
- Ensure that employees who intend to undergo, are undergoing, or have undergone gender reassignment are treated with fairness and support in their recruitment and development
- Support staff to contribute to culture change within this organisation

To ensure practice is principled, evidence-based and sensitive, NHS Forth Valley has used learning from a number of specialist agencies including Stonewall Scotland, Scottish Trans and NHS Forth Valley Fair for Community Advisors

3. What does transgender mean?

Transgender 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 transgender issues within a social model of health, for the purposes of the 'Supporting Transgender Staff in the Workplace Protocol and Guidance' NHS Forth Valley understands the term transgender and its legal protections to include anyone proposing to undergo, undergoing or having undergone any part of a process for the purpose 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 identity.

4. NHS Forth Valley – Our responsibilities as an employer

NHS Forth Valley supports and respects diversity in all aspects of its functions, including those relating to our responsibilities as an employer. The organisation views discrimination against employees as unacceptable in any form. Transgender employees will enjoy the right to equal treatment and protection from discrimination and harassment as outlined in the organisation's [Bullying and Harassment](#)

A robust piece of USA research in 2016 found that 0.6% of the population in the USA identify as transgender, with individual USA states varying from 0.3% to 0.8%:

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>

At present there are no similar quality statistics for Scotland or the UK.

It could be estimated that somewhere between 15,000 and 30,000 people in Scotland self-identify as transgender in the widest sense. (Scottish Transgender Alliance)

National evidence has shown that a disproportionate number of transgender people are unemployed or employed in low paid work. Much of this relates to perceived or real discrimination in the workplace and NHS Forth Valley will work to promote the organisation as a credible employer of choice for transgender people.

NHS Forth Valley commits to uphold our legal responsibilities to transgender employees in the following manner. The legal framework protecting the rights of transgender employees has been included in **Appendix C**.

4.1 Respecting the gender identity of transgender employees

NHS Forth Valley will ensure that transgender staff are treated as being of the gender in which they are living irrespective of whether they have undergone any hormonal or surgical treatment or have a Gender Recognition Certificate. It is unacceptable for colleagues and managers to refuse to recognise, for any period of time, a member of staff as belonging to the gender in which they are currently living.

Discrimination from staff, other patients or the public will not be tolerated. In the case of staff being discriminatory, the manager should use the relevant policies/procedures to deal with the situation.

As a Public Body we have a Duty under the Equality Act to foster good relations between individuals who have protected characteristics and those who do not.

4.2 Genuine Occupational Qualification (GOQ)

The Equality Act 2010 provides limited exemptions for GOQ positions to restrict access to members of a particular gender. These exemptions can only be applied in order to achieve a legitimate operational need. All efforts should be made to enable transgender employees to work in positions, including those covered by General Occupational Qualifications, consistent with the gender with which they identify.

Where a person has a gender recognition certificate they must be regarded as being that gender for the purposes of GOQ positions. As the gender history of an employee is a matter of strictest confidentiality, this information should never be shared with service users.

Where an employee undergoing gender reassignment currently works in a GOQ position restricted to the gender they were assigned at birth, every effort will be taken to work collaboratively with them to either adapt the duties of the post to enable them to continue working in it or to redeploy them to a suitable alternative post.

4.3 Harassment

NHS Forth Valley adopts an all-encompassing anti-harassment stance to protect our employees. This means harassment will not be accepted be it perpetrated by staff, visitors or service users. A 2000 report looking at workplace harassment issues for transgender people found that more than a quarter of transgender employees faced harassment and discrimination (verbal and physical) on a regular basis.

These actions would be in breach of NHS Forth Valley workplace policies and in some circumstances may constitute criminal behaviour under Hate Incident legislation. NHS

Forth Valley considers harassment and bullying to be pernicious in the extreme and will act swiftly to deal with all cases as part of our commitment to providing an inclusive workplace.

4.4 A shared vision

NHS Forth Valley trust that our transgender staff feel fully supported in relation to all aspects of their gender identity and gender expression and will continue to develop better ways of working to ensure transgender people feel happy, safe and secure in all their dealings with us and come to recognise NHS Forth Valley as a leader in best practice across our systems.

5. Gender Reassignment – Points for consideration

5.1 Managing Staff going through Transition

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

Transitioning is a personal process (rather than a medical process), which involves a person expressing their gender in any way that differs from the gender they were assigned at birth. This 'may include undergoing medical procedures, or may involve dressing in a different way.' It is best practice to assume that all transgender people have a gender recognition certificate and to treat them accordingly.

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

When a member of staff considers embarking on transitioning, the initial point of contact may vary according to the nature of the workplace and preference of the individual, but could be; an immediate line manager, a senior manager, Human Resource Manager, Equality and Diversity Manager, Occupational Health Department, or any other appropriate member of staff.

All must maintain confidentiality except as agreed otherwise by the individual. It is vital to assure that the Health Board will be supportive and that it does not tolerate discrimination against or harassment of transgender employees.

Role of the Managers

Every manager employed by NHS Forth Valley is responsible for promoting equal opportunities in practice and, where applicable, for preventing patient and staff discrimination.

Line managers are responsible for:

- Ensuring that all staff are aware of the Supporting Transgender Staff in the Workplace Protocol and Guidance and attend any relevant training
- Challenging staff who discriminate and ensuring that the relevant procedures are followed i.e. [Bullying & Harassment](#), [Conduct Policy](#) etc
- Supporting their staff to challenge discrimination from patients or the public

- Agreeing a plan with a staff member who is proposing to transition to ensure that they are supported throughout the process.
- Ensuring that a transgender person is addressed and treated as the gender they identify with.

Initially, managers (and any other member of staff acting as a point of contact) should ensure they are familiar with this policy and any other resources or systems in place in order to support the individual fully.

Through discussion with the employee an NHS Forth Valley main point of contact will be agreed. A meeting will be arranged with the nominated person to have a more detailed discussion and support the employee in the process of transitioning at work.

Where appropriate the individual concerned should be provided with an agreed member of the Human Resource Team or Equality Manager to act as an advisor and to provide guidance and advice to the member of staff and their manager. They may also wish to bring a friend or support with them to the first meeting.

5.2 First Meeting

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

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

It may help to support discussion to use **Appendix F** as a guide to work with the staff member as a joint action plan for managing the transition at work.

This, along with any other notes of the meeting, must be kept strictly confidential in a secure location.

Developing a joint plan for managing transition at work:

The action plan could include:-

- The anticipated point or phase of change of name, personal details and social gender
- Date of Changing their gender presentation at work'
- Discuss the amendments that will need to be made to records and systems as well as if required notification to Nursing and Midwifery Council and General Medical Council etc. (See 6.6)
- A procedure for adhering to any change in dress code/uniform.
- Agreeing the point at which an individual will commence using single sex facilities such as toilets, changing rooms and showers in their affirmed gender.
- Transition whilst in employment/post – discussion with the employee should inform any actions of when and how colleagues should be informed – the employee should decide who performs the task – and whether any training in gender identity issues is needed. The staff member may prefer the equality manager or identified other to do this.

- Whether a transgender employee is adequately covered by existing protocols on issues such as confidentiality, harassment and insurance and if not, how these will be amended.
- Discuss whether the employee's job role has a genuine occupational requirement to be a particular gender'. (See section 4.2.)
- Discuss any employee concerns about whether they wish to stay in their current position or if they wish to be redeployed – this will be the choice of the individual. It is inappropriate to redeploy someone who wishes to transition just because you think it is in their best interests.
- Time off required for medical treatment (if known), this may vary considerably in accordance with the needs of individuals concerned. To be discussed with Occupational Health Department and identified point of contact.
- Discuss and prepare an agreed statement which could be used in the event of any adverse media enquiries.

After a person has transitioned into their affirmed gender role it would not be appropriate to keep these records within the personal file.

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

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

5.3 Social Transition

At some point the employee will likely wish to present themselves at work in their affirmed gender. When the employee indicates that they are ready to begin working in their affirmed gender, the plans agreed to under the previous section should be implemented.

It is important to allow the employee to be in control of the timetable for this and to be flexible in the case that the employee decides that the experience is too difficult, and wishes to delay any part of it.

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

5.4 Informing and Supporting Colleagues

How colleagues are informed of a member of staff's transition is a decision to be made by the member of staff who is transitioning. They should be offered a choice as to which colleagues are informed, and how the information is communicated. They can choose who they would like to inform their colleagues, and what method of communication they would like to be used.

The Health Board **must not** inform colleagues, clients or the public that an employee is intending to undergo or is undergoing or has undergone gender reassignment without the employee's **explicit written consent**.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender transition. This is a private matter since being transgender will have no bearing on that person's ability to do their job.

With regard to the change of name, all staff must refer to the transgender person by their preferred name and use pronouns appropriate to their affirmed gender.

General information and awareness training about transgender issues is available on the Equality and Diversity pages of the Health Board Intranet site for all staff. This section also provides specific information to help people to understand the needs of the person transitioning as well as information for staff with regards to support available.

Any additional issues or areas of concern or requiring further clarity can be discussed with the Equality Manager or identified point of contact. Each team is different and support either as a team or on a 1:1 basis should be met on a need led basis further to discussion with the individual concerned.

Such disclosure may result in a criminal offence if the person concerned has a Gender Recognition Certificate (GRC) and it is done without the explicit consent of the individual concerned. It is good practice to assume that 'all trans people have a GRC'.

5.5 Staff in Public Facing Roles

A member of staff's gender transition may be unavoidably visible to the public. There is no general need or obligation to inform colleagues, clients or the public that a person is transitioning however, such information may be considered appropriate where the relationship with that individual was established prior to their transition and is to continue.

This however should only to be completed with permission from the member of staff who is transitioning. Each situation is different and the ways in which informing people should be delivered on needs led basis. Examples of a range of statements which can be used dependant on circumstances are reflected in **Appendix A**. These however can only be used with prior approval from the individual concerned.

In such a case an explanation may be considered necessary; however the manager should discuss and agree with the transgender person if and how the information should be given.

In these circumstances, it is important that managers support the member of staff in a positive manner and listen to how they feel about things and how they feel they are coping. Managers should be willing to explore equitable solutions. Colleagues may also benefit from advice on how to contribute.

Some staff may elect to move to another role during transition, however, they cannot be required to do so. Similarly, the way someone looks and the negative reactions this might be expected to elicit from certain members of the public must not be a barrier to people undertaking a public facing role.

5.6 Time off for appointments

In line with [NHS Forth Valley's Special Leave Policy](#), staff will be given reasonable time out for hospital appointments. You should liaise with your manager/supervisor to discuss and agree what time is required. If you have to attend a hospital outwith Forth Valley then your manager should make allowances for travel to and from that location.

If a staff member is unable to attend work due to ill health then this will be supported through the [Attendance Policy](#).

5.7 Staff Facilities

NHS Forth Valley supports transgender people's right to use the facilities that they feel are the most appropriate to their gender. This includes the right of non-binary people to use the facilities that they feel are most appropriate to them, i.e. male, female or accessible facilities.

Where sex specific facilities do not afford reasonable levels of privacy for staff (shared changing areas etc.) measures will be taken to Make reasonable adjustments to meet this need. This is not a consideration to 'protect' transgender or non-transgender staff, but rather to ensure that all members of staff, irrespective of their age, disability, gender, gender recognition, race/ethnicity, religion/belief or sexual orientation is accorded the right to privacy.

Use of Changing/Shower Facilities and Toilets

The use of changing/showering facilities and toilets will be part of the discussion process with the member of staff transitioning, their affirmed gender with a view to agreeing the point at which the use of facilities should change from one gender to another. An appropriate stage for using the facilities of their affirmed gender is likely to be the change of social gender.

Should there be any objections to this; the objections will be dealt with by a manager in a sensitive and understanding way while not denying the transgender person access to facilities appropriate to their lived gender. It is not good practice to allocate specific facilities for the individual who is transitioning.

In particular, trans people must not be asked, expected or required to use accessible facilities allocated for people with disabilities (unless they have a disability which requires this). Where a transgender person freely prefers to use accessible gender neutral facilities, perhaps because they have a non-binary gender identity, then this should be permitted.

Where changing or shower facilities are open plan, then it is good practice to review this and at least make some provision (e.g. curtained spaces) where staff need not be in a state of undress in the presence of others.

If it is genuinely impossible to adapt such changing/shower facilities to accommodate this, then there is one very limited example of an instance where the law permits an employer to make separate arrangements.

It would not be acceptable to expect an individual undergoing transition to use facilities designated for use by the gender they were assigned at birth.

‘Whether or not a person’s transition has involved any medical processes, the individual should be fully supported in using facilities appropriate to their gender’.

The Health Board will ensure that any arrangements for toilet/shower/changing facilities are satisfactory to the transgender member of staff and their colleagues and patients as appropriate. Any unsatisfactory practical arrangements must be reported to the designated Manager as soon as possible.

5.8 Uniform & Dress Code

Within NHS Forth Valley, uniforms and clothing must be compatible with safe moving and handling practice and appropriate to the area and sphere of work undertaken. The NHS Forth Valley Uniform Policy and Dress Code aims to minimise the risk of cross infection, whilst importantly maintaining staff and patient safety at all times. As with any healthcare organisation it is vital that all staff and students portray a positive and professional image to enhance public trust and confidence.

We would therefore fully support any transgender member of staff with regard to the clothing they feel best represents their gender identity.

6. Personal Data & Information

6.1 Retention

Employees at all levels who could learn about an individual’s Transgender history in the course of their work need to be very clear about the handling of this information. This could apply to:

- The information that can be entered into Workforce files where other staff might have access
- Discussion about an individual’s application form and applicant’s job interview.
 - Please note: Supporting documents such as degree certificates and references may not use the applicant's correct name and gender.
- The contents of Occupational Health Reports
- Information that can be passed from one medical professional to another in the course of referral or when discussing a case
- Information stored in medical records where others could access that data.

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

6.2 Proof of right to work in UK

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

If a transgender person does not have a UK passport in their current gender identity then their birth name and gender they were assigned at birth may be present on a document shown. In such cases the Human Resource Manager should explain that retaining a copy of the document on the employee's record is a legal requirement imposed by the UK Government. They should also explain that if they employee later gains a new document then Human Resources can replace the document kept on file. Confidentiality must be maintained.

6.3 Record Keeping

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

After two years living in their affirmed gender with all their records updated (except their birth certificate), transgender people have the option of applying to the Gender Recognition Panel for a gender recognition certificate which can update the gender on the person's UK birth certificate and provides enhanced gender history privacy protections.

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

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

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

When documents have been seen and copies taken at the point of starting employment (such as birth certificate) then every effort will be made to replace those with equivalent documents in the new name and affirmed gender. The Data Protection Act limits the purposes for which information may be kept. When the information is no longer useful, it must be destroyed.

In some instances, it is necessary to retain records relating to the gender someone was assigned at birth, for example, for pension or insurance purposes prior to obtaining legal gender recognition. However, once a person has obtained a gender recognition certificate, these must be replaced with new details.

Access to records showing the change of name and any other details associated with the individuals transgender status (such as records of absence for medical treatment) must be restricted to staff who need the information to do their work.

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

Breaches of confidentiality about a person's gender history and transgender status must be treated in the same serious manner as disclosure of sensitive personal information (for example, medical details) of any other member of staff. In addition to being data protection violations, breaches of confidentiality can be gender reassignment discrimination or harassment under the Equality Act 2010.

It must also be recognised that such disclosure after the receipt of a gender recognition certificate is a strict liability of a criminal offence and may be subject to internal investigation in line with [Conduct Policy](#). Information about exceptional circumstances where it is lawful to disclose someone's gender history can be found in **Appendix C**.

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

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

6.4 Work Permits

Staff who are working in the Health Board on a work permit or student visa are asked to comply with any work permit/visa regulations, which may relate specifically to name change or gender recorded on file in order that the work permit/visa continues to be valid.

6.5 National Insurance

Staff who change their name will need to inform the local Department of Work and Pensions. People will be referred to in their new pronouns by HM Revenue and Customs, but any gender-specific calculations relating to their pension, national insurance contributions or benefits will be based upon the gender assigned at birth unless and until they receive a gender recognition certificate.

6.6 Professional Registration

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

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

7. Recruitment and Selection

7.1 Recruitment

It is intended that there be no barriers to a person who identifies as transgender or people with transgender histories from applying for employment within Forth Valley.

All those involved in the recruitment and selection process should be made aware of their responsibilities to select fairly and without prejudice.

7.2 Confidentiality within the recruitment and selection process

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

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

7.3 Protection of Vulnerable Groups (Scotland) Act 2007

Specific guidance for transgender people completing a Disclosure form is available for information on the Disclosure Scotland website. Disclosure Scotland operates an application process for transgender people to assist in ensuring discretion is afforded to such individuals who do not wish the gender assigned at birth (and names) to be disclosed to the person or organisation requesting the Disclosure. Any questions on this process should be directed towards Disclosure Scotland Helpline on 0870 609 6006 (Please ask to speak in confidence with the Operations Manager)

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

8. Dissemination and Implementation of the Supporting Transgender Staff in the Workplace Protocol and Guidance

The Director of Human Resources and Organisational Development, Director of Nursing who is executive lead for Equality and Person Centred Care and the Equality Manager are responsible for the implementation of this protocol.

- To be submitted to Area Partnership Forum for approval
- Following approval, the protocol plus the Equality Impact Assessment will be added to the NHS Forth Valley document library accessible through the Intranet site.
- A clear communication will be sent to all managers and staff publicising its existence
- Training will be provided with the launch of the protocol and reference to the protocol will be made within the Equality and Diversity session within corporate induction.
- Transgender e-learning package will be available for all staff within Learn Pro system and Supporting Transgender Staff in the Workplace Protocol and Guidance will be identified within same.

Managers

Every manager employed by NHS Forth Valley is responsible for promoting equal opportunities in practice and, where applicable, for preventing patient and staff discrimination.

Line managers are responsible for:

- ensuring that all staff are aware of this protocol and attend any relevant training
- challenging staff who discriminate and ensuring that the relevant procedures are followed i.e. Dignity and Respect at Work, etc
- supporting their staff to challenge discrimination from patients or the public
- agreeing a plan with a staff member who is proposing to transition to ensure that they are supported throughout the process
- ensuring that a transgender person is addressed and treated as the gender they identify with

Role of the Human Resource Equality Steering Group

They are responsible for:

- Overseeing the development and monitoring of the Transgender Protocol
- Consulting with members of the transgender community when appropriate
- Reporting and responding to any issues of discrimination or non compliance of the Supporting Transgender Staff in the Workplace Protocol and Guidance 2017

Role of Individual Staff

All employees have a personal responsibility to support the equal and fair treatment of colleagues to ensure people are treated consistently in a non-discriminatory manner.

All staff members are responsible for:

- Complying with the 'Supporting Transgender Staff in the Workplace Protocol and Guidance'.
- challenging/reporting discriminatory practice or language

Updating and Review

The protocol will be fully reviewed in three years or earlier if indicated from the result of monitoring and review, legislative changes, a national policy instruction or NHS Forth Valley decision.

This protocol; should be read in conjunction with the following NHS Forth Valley documents:

- [Attendance Policy](#)
- [Bullying & Harassment Policy](#)
- [Equality, Diversity & Human Rights Policy 2016](#)
- [Hate Incident Protocol & Guidance 2015](#)

Appendix A

BRIEF FOR FRONT FACING STAFF / RECEPTION STAFF

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

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

Patient

Can I have an appointment with John Smith?

Response

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

Patient

No I want to see someone else

Response

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

Patient

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

Response

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

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

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

OR

Patient

So has John Smith left?

Response?

No, **John Smith** will now be known as **Mary Smith**. The Department/Directorate/Organisation/clinic is very supportive of this change and we can reassure you that this change will not have an impact at all on the care that we deliver.

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

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

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

If the patient raises concerns or becomes abusive the caller should be referred to someone else more senior for further discussion”.

What Does Transgender 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 or fluid.

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

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

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

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

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

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

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

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

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

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

Many thanks to 'Scottish Trans' for developing the enclosed Glossary <http://www.scottishtrans.org/>

General Information

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

NHS Forth Valley 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 transgender people are included as **Appendix C** to this Protocol.

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

[NHS Forth Valley Equality Gender Reassignment](#) Web page also provides information on contact details of local and national groups etc

Legal protection

The foundation of delivering services that are non-discriminatory must be compliance with the law. As a starting point on the journey to delivering fully inclusive and accessible services, NHS Forth Valley staff must be familiar with their legal responsibilities in relation to working with transgender service users and transgender 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 transgender person (for example, if they are a friend or family member) and due to being incorrectly perceived to be transgender when they are not actually a transgender person.

LEGISLATIVE DEFINITIONS OF UNLAWFUL BEHAVIOUR RELATING TO GENDER REASSIGNMENT

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

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

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

Indirect discrimination - Putting in place a 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 unfavourably because they have taken (or may be taking) action under the Equality Act or supporting someone who is doing so.

The Equality Act (2010) (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 and harassment; promote equality of opportunity and promote good relations between people who have the protected characteristic of gender reassignment and those who do not. The Act places a responsibility on statutory services to pro-actively promote non-discriminatory practice, moving the focus away from an historic reactive complaints-orientated approach. This means services must invest 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 some transgender people following a permanent change of gender. It sets out the process for individuals to apply for a Gender Recognition Certificate (GRC) after living full-time in their acquired gender for at least 2 years. It is not necessary for someone to have undergone genital surgery or any other medical intervention other than a diagnosis of gender dysphoria to receive a full GRC.

Once a full GRC is issued to a person, their legal sex/gender henceforth becomes for all purposes their affirmed 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 affirmed 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 affirmed gender. Indeed, as it is necessary to live fully in the affirmed 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 affirmed 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 Forth Valley 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).

Health Outcomes for Transgender People

‘Transgender people are likely to be the subject of bullying, harassment and discrimination, which could have an impact on their mental health and wellbeing. Because of this, transgender people are more likely to suffer from mental health issues including depression, suicidal ideation, and addiction-related behaviour and self-harm.’

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

Discriminatory practice

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

- People refusing to associate with or ignoring them because of their transgender status
- Not being addressed, or thought of, as belonging to their 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 transgender status released without their approval
- Not being allowed to use sanitary facilities that are appropriate to the gender in which they live
- Being treated less favourably than others in regard to sickness or other absences
- Being refused access to services, facilities or premises due to prejudice from staff or other service users
- Being verbally abused or physically assaulted because of their transgender status.

As an employer in Scotland with around 8000 members of staff, NHS Forth Valley cannot claim to have a shared value base across its work force in relation to understanding of transgender issues.

However, as both an employer and deliverer of care for transgender people we will ensure that health and life experience are not diminished but rather enhanced through celebrating and embracing diversity.

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

Workplace Scenario:

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

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

The immediate problem appears to be apparent lack of planning and support for the transition of a member of the workforce. While not all transgender employees will want to publicly announce their intended transition, it is unacceptable for the workplace not to have put in place arrangements to support the employee in this instance. It may be that in the early days of transitioning another member of staff who's a bit more sympathetic can accompany the transgender employee to the toilet facilities.

The above aside, the manager has a clear duty to ensure that the transgender person does not feel excluded or harassed in the workplace and is afforded the same level of dignity and respect as non-transgender employees. This needs to be explained clearly together with an expectation that support from colleagues will be required. The manager needs to be familiar with legal rights in this instance and perhaps some contextual information relating to the challenges faced by transgender people in society.

This can help explain the process and create a better understanding of gender variance. An agreement to provide a separate toilet facility for the transgender person is unreasonable and inappropriate and would result in the employee feeling excluded in the workplace.

It could also be challenged legally – similar cases where transgender people have been forced to use disabled toilets etc. have resulted in significant awards in favour of the transgender person.

Kindly provided by: NHS Greater Glasgow and Clyde

Points to discuss or consider for Supporting Staff Transitioning.

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

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

Details	Date
<p>Transition Process</p> <ul style="list-style-type: none"> • Is the individual taking any extended time off? Is this additional paid/unpaid leave? • Is time off needed for medical appointments (which may require to be taken during normal working hours) • How can ongoing medical procedures be accommodated i.e. M/F transition may need facial hair removal. Consider whether this can be accommodated by working flexi hours/or home working • Does the person need time off for medical reasons or appointments? • If an individual undergoes any surgery, recovery may take between one to twelve weeks.' Please refer to sickness absence policy • What arrangements have been put in place to support an individual's return to work? Occ Health may support phased return? 	
<p>Support for individual/communication</p> <ul style="list-style-type: none"> • How will colleagues be informed? Can statement be agreed and who delivers it? • How and when will external contacts be informed? • Is there training needed? • Impact change may have on their work and adjustments that could be made. 	
<p>Discrimination</p> <ul style="list-style-type: none"> • Are there clear guidelines and processes to deal with direct or indirect discrimination or harassment of transgender people? • Are systems in place in to address any adverse publicity or reactions from patients etc to ensure the employee is supported? 	

Publications in Alternative Formats

NHS Forth Valley is happy to consider requests for publications in other language or formats such as large print.

To request another language for a patient, please contact 01786 434784.

For other formats contact 01324 590886,

text 07990 690605,

fax 01324 590867 or

e-mail - fv-uhb.nhsfv-alternativeformats@nhs.net