



Delivering the right care, at the right time, in the right place

Guidance for Managers – Supporting Transgender Staff in the Workplace

This guidance has been developed to support managers who have staff who have advised of their intention to start to transition from their birth gender. It is designed to help managers support their employees – both those who are transgender and other colleagues within their teams – from the first steps of transition onwards. It should be used alongside the Trust Policy for Transgender Employees.

Who does this affect?

Legally, for NWAS, anyone who has informed their employer that they are seeking to transition to a different gender is covered. The Trust will use this policy to protect anyone moving away from their birth gender. They are protected in law from discrimination and harassment. This extends to when an employee has left the Trust, for example, when providing references.

There are strict requirements relating to confidentiality so staff are not to disclose that an employee or applicant is transgender, regardless of their stage in the recruitment process or employment status, without explicitly seeking consent of the individual. Section 3.2.3 of the policy – It is unlawful to disclose a person's transgendered status without their consent.

According to GIRES (Gender Identity Research and Education Society), transgender people are likely to make up more than 1% of the working population. Therefore within NWAS, there could perhaps be 60 people who do not feel that the gender they were given at birth reflects them. A proportion of those will seek to transition. NB Some reports advise that the estimate of 1% is low and that the real figure is higher.

What does it mean, 'to transition'?

Transition can mean an individual presents in a gender different to the gender they were assigned at birth – ie the clothes they wear, make-up, hair. It can mean changing their name. It can mean undergoing medical or other interventions – surgery, counselling, voice coaching. People transition in different ways and the way this is carried out is different for each individual.

Legal requirements

An individual is protected under the Equality Act 2010 from the moment they propose to move away from their birth gender. As a protected characteristic, this protection includes direct discrimination, indirect discrimination, discrimination by association and by perception.

Not all trans people obtain a Gender Recognition Certificate; those who have are protected by the strict confidentiality and privacy parts of the Gender Recognition Act. However it is not appropriate to ask if someone has a Gender Recognition Certificate. For applicants and employees, the assumption must be made that the person has one and their privacy is to be protected. In any case, it can be a breach of privacy under the Data Protection Act 1998 and Human Rights Act 1998 to reveal private sensitive information about an individual's trans status or history.

Confidentiality

Staff and managers can only mention the trans status or history of an applicant or employee if they have provided consent to do so – ideally written consent. As with all sensitive information, it should be shared if relevant and required – not as gossip. Disclosing the trans status of an individual without consent could be considered direct discrimination.

What should I do if an employee advises that they are transgender, trans or transitioning?

In the first instance, managers should listen. It is a huge step for an individual to inform their employer that they are seeking to transition. The employee may have been considering making this step for several years. Transgender people are more likely to face violence and discrimination than other groups, so there is a risk and uncertainty in taking this step (nearly half of transgender employees have experienced some form of discrimination in work). Managers are asked to remind employees that declaring being trans in this Trust will be accepted, professional development will not be affected by it and any negative behaviour coming from any sources (patients or staff) will be challenged.

It is recommended that managers sit down with their employee to look at the 'action plan'. It is there to start discussions about how the employee would like the Trust to support their transition. It includes informing colleagues, paperwork and using areas such as toilet facilities.

Managers can seek advice on the policy and action plan from their HR Advisor, requiring consent from the employee if they are to be named as part of those discussions. Again, if the manager and employee would benefit from the HR Advisor attending the action plan meetings, they can ask.

Using the action plan

Managers are advised to use the action plan (found at Appendix 2 of the policy) as an outline for discussing key themes relating to supporting staff in transition. The timescales are different for each individual. The meetings to look at the action plan may need to become more or less frequent as and when an individual is at different stages of transition. There is no time limit on transition.

Flexibility is key in supporting individuals. This may include permanent or temporary changes to the role or location. It can also include time off work to attend medical appointments; information is already provided in the policy about this.

It is not possible to be prescriptive about the discussions that will come up and the agreement of required support is between the employee and their manager, although the employee may have accessed support from someone else in the Trust too.

It is paramount that no employee should feel obliged to transition in a particular way to make the transition easier for the Trust. However there are procedures to be adhered to, such as those relating to time off work.

The next three sections provide information further to that provided in the policy:

Use of Single Sex Facilities

Trans employees are able to use the toilets of their expressed gender. It is not appropriate (nor legal) to ask a trans member of staff to use any other available facilities. So if there are male and female facilities, the trans employee will be able to use the toilets of the gender they now present in. If they choose to use disabled or unisex facilities instead, that is their choice alone; a request should not be made on account of their trans status. A manager is able to suggest the use of a disabled facility if the employee has a declared disability and where the space and privacy would be a supportive measure for that disability. It may be recommended too if there are concerns about a lack of privacy in the single sex toilets where the employee has concerns about privacy.

Should other staff members have an objection to the above for any reason, they should discuss this with their manager. As well as listening to and addressing the concerns of the staff member, the discussion should include reference to the law advising that the trans employee can legally use a particular facility, the Trust values of care and compassion and the Trust vision of an inclusive workplace. Please also see 'Harassment' section below.

Records and Name Changes

It is possible for staff to change their name in work and this is something managers can facilitate. However a Deed Poll or Statutory Declaration requires retrospective amendments to be made to existing documents and records as well as newly created ones. These documents are what NAWAS will require for changing payroll/ESR information (or a Gender Recognition Certificate). Please also see 'legal requirements' above.

A name change can be made to National Insurance and tax records relatively easily however the gender cannot be changed for these records, without a Gender Recognition Certificate. It should be straightforward to change other documentation with authorities, such as driving licence.

When the name change and gender change is made, NAWAS should ensure all documents, email addresses and employment information reflect the new name and gender status.

Documents reviewed at the start of employment (e.g. birth certificate or driving licence) should be replaced with the equivalent documents in the new gender and name. There are exceptions though - namely records relating to birth gender for pension or insurance purposes - these should remain confidential.

Professional Registration and Qualifications

As far as possible, updated certificates should be provided by the original academic or other institution. As a Trust, we may need to keep evidence of professional status or qualifications, which may have been issued in a previous name, so this must be discussed with the individual.

Language

Recent guidance is that the trans community prefer the use of trans rather than transgender. Transsexual is now largely seen as a dated term and is to be avoided.

Gender reassignment is the name of the protected characteristic in the Equality Act.

Staff are advised to use the pronoun relating to how an individual has presented i.e. 'she' and 'her' for any colleagues or candidates presenting as a female in the workplace and clearly identifying in that way. If you are unsure, ask how a person wishes to be addressed. You may wish to use gender neutral descriptions.

Definitions of wider trans terminology (such as non-binary and gender-fluid) are covered in the policy. Language continues to develop and the Trust will continue to review what is and is not appropriate.

Where to get more help or information from?

The overarching message is to speak to the individual about their needs. The Nwas LGBT Network is available to staff and managers to provide advice and guidance (email: lgbt@nwas.nhs.uk). HR Advisors are available to discuss the policy to support staff during transition and can be available for meetings relating to the action plan if required. The HR Hub can also offer support to managers about the documentation and name change aspects as required. The Trust has a HR Advisor for Workforce and Equality who is available to discuss any aspect of the policy and guidance.

Nwas will seek to ensure that there are resources available to managers and staff about trans issues on the intranet in the first instance.

Harassment

Harassment may arise from transphobia, which can be defined as an irrational intolerance of people who change their gender appearance. It may be intentional or subconscious. It can show itself through assumptions, language, actions and physical behaviour.

'Banter' can be viewed as harassment. It is not acceptable to make jokes about trans people, or one person in particular, whether a trans person is present or not. Such behaviour can prevent an open and transparent culture within a team; this can impact on all staff, regardless of protected characteristic, and ultimately on patient care. More information about harassment in general can be found in the Dignity at Work Policy.

Refusal to use the new name and/or pronoun of the trans person or objections about sharing toilet facilities could be the start of behaviours leading to harassment. Unacceptable behaviour should be stopped immediately and reported so that there is no escalation.

Colleagues

Staff who have been informed that a colleague is transitioning may have lots of questions. Some issues relating to confidentiality and language may have been covered above. Additional guidance will be made available shortly.