

Supporting Trans*, non binary and non-gender employees and people who use our services.

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TRUST-WIDE NON-CLINICAL and CLINICAL POLICY DOCUMENT

2017 – Version 2

Striving for perfect care for the people we serve

TRUST-WIDE NON-CLINICAL and CLINICAL POLICY DOCUMENT

HR32 Supporting Trans*, non binary and non-gender employees and people who Trust services.

Further information about this document:

Document name	Supporting Trans*,Non binary and non-gender employees and people who use Trust services	HR 32
Document summary	This policy has been put in place to provide guidance on how Mersey Care will support both staff and the people who use its services who are within the gender reassignment process or identify as Transgender.	
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To be read in conjunction with	HR10 Equality Policy HR09 - Implications for Practice and the Management of Abuse, Discrimination and Violence. HR04 Leave for personal and family reasons HR07 Management of attendance IT06 Health records IT10 Confidentiality and information sharing HR 19 Organisational Change	
This document can be made available in a range of alternative formats including various languages, large print and braille etc.		
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Version 1	HR Policy Group	July 2017
Version 2	Trust wide policy group	October 2017

SUPPORTING STATEMENTS

this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child / adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child / adult;
- knowing how to deal with a disclosure or allegation of child /adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child / adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

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1. PURPOSE AND RATIONALE

- 1.1 This policy provides guidance to ensure that trans* people who use the services provided by Mersey Care, are employed by Mersey Care or come into contact with Mersey Care for any reason, are treated with dignity, respect and in line with the law. Consultation with trans* people and staff has been taken into account in the writing of this policy
- 1.2 The policy is aimed at supporting those who are described under the Equality Act 2010 as “proposing to undergo, are undergoing or having undergone a process (or part of a process)” associated with transition. Transition marks the moment when a person changes their public gender expression, including names, pronouns and titles. It is the point at which trans* people may be at their most vulnerable.
- 1.3 Transition may or may not be associated with gender affirming medical interventions. Such interventions are not required in order to be protected by the Equality Act 2010 is important to understand that transition does not change the gender identity of the individual, but other external factors, such as a name, pronouns, dress etc., are brought into line with that identity. A person who was assigned male at birth and who identifies as a woman may be described as a trans* woman, or simply a woman, and use female pronouns ‘she’ ‘her’. A person assigned female at birth who identifies as a man may be described as a trans* man, or simply a man, and use the pronouns ‘he’ ‘his’. These groups are ‘binary’ (one or the other) in terms of their identification.
- 1.4 Other trans people may feel they are not at the far end of the gender spectrum and prefer terms such as trans feminine, or trans masculine; and, in addition, those whose identities lie between the ‘binary’ groups are described as non-binary or gender queer, but may choose a variety of self-descriptions, for example, pan-gender, poly-gender, neutrois, or gender fluid. They may use neutral pronouns such as ‘they’, ze or fey; those outside the gender spectrum, who reject the concept of gender altogether in relation to themselves, are ‘non-gender’ and may use the pronoun ‘per’. All these groups require respect for their social status; they may or may not need gender-related medical interventions. Non-binary people are more numerous than trans* binary people.¹
- 1.4 The Equality Act 2010 was not originally intended to cover the wider non-binary, non-gender groups, but legal Opinion² maintains that those proposing to undergo ‘a part of a process’ or having done so, may have the same protection as other Trans* men and women. The Equality Act 2010 also protects those who are discriminated against because they are ‘perceived’, wrongly, to be trans*. Those associated with trans* people, such as family members or carers are also protected under the Act.

¹ Kuyper, L., & Wijzen, C. (2014). Gender identities and gender dysphoria in the Netherlands. *Archives of Sexual Behavior*, 43, 377–385.

² McCann, Women and Equalities Select Committee Inquiry.

https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/39003.htm#_idTextAnchor216

1.5 Gender incongruence / gender dysphoria

1.6 Conditions where the assigned birth-sex is not congruent with the gender identity have, in the past, been regarded as psychopathological. NHS England has made it clear that this is no longer the case. The World Health Organisation is in the process of moving 'transsexualism', under the new description, 'gender incongruence', out of Mental and Behavioural Disorders, into a category which does not imply mental illness. The biological triggers underlying the incongruence are described in peer-reviewed literature.³ The discomfort arising from the incongruence is described as gender dysphoria. It is this discomfort which Trans* people, who may be anywhere on the gender spectrum, require social and clinical support.

1.7 Human Rights Act 1998 - The Human Rights Act details the principles of Fairness, Respect, Equality Dignity, and Autonomy (FREDA Principles) as fundamental. It gives further legal effect in the UK to the fundamental rights and freedoms contained in the European Convention on Human Rights.

1.8 Trans people, historically, have been targeted in public spaces and, even in the medical profession; there remains much prejudice and misunderstanding.

1.9 "High levels of transphobia are experienced by individuals on a daily basis (including in the provision of public services)—with serious results".⁴ High rates of suicidal ideation (84 per cent lifetime prevalence) and attempted suicide (48 per cent lifetime prevalence) were found in a 2014 study (n=889). Factors such as: fears around transitioning, delays and refusals regarding treatment, and social stigma were found to increase suicide risk.⁵

1.10 In 2007 'Equalities Review' reported that 20% of Trans*people were refused registration by GPs who knew they were Trans*.

1.11 Mersey Care NHS Foundation Trust understands the benefits of gender specific treatments, as well as social support, in improving the lives of Trans* people. The Trust is committed to meeting their needs, providing services which are accessible, appropriate and which recognise the diversity within the Trans* population.

³ Reed and Diamond (2016) Biological correlations in the development of gender dysphoria. The Lancet

⁴ Women and Equalities Select Committee Inquiry Report Summary

https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/39003.htm#_idTextAnchor216

⁵ Bailey, Ellis, McNeil (2014) Suicide Risk in UK trans population, Mental Health Review.

<http://www.emeraldinsight.com/doi/abs/10.1108/MHRJ-05-2014-0015>

2. OUTCOME FOCUSED AIMS AND OBJECTIVES

- 2.1 This policy seeks to ensure that the provision for Trans, Trans*, Non binary and non-gender people is responsive to individual need; is prejudice free and challenges the discrimination individuals may experience.
- 2.2 Mersey Care NHS Trust is committed to best practice and to the adoption of human rights based approach and the incorporation of the 'FREDA' principles into everything we do. This means treating everyone, with Fairness, Respect, Equality, Dignity and Autonomy. As an organisation, we will ensure that, Trans*, Non binary and non-gender people whether service users, carers, staff or volunteers are accepted and treated at all times as the gender in which they permanently present.
- 2.3 The policy supports the Trust commitment to the specific issues for Trans* people in relation to confidentiality and adhering to the Caldicott Principles:
1. Justify the purpose/s for using a persons' confidential information.
 2. Only use it when absolutely necessary
 3. Use the minimum that is required
 4. Access should be on a need to know basis
 5. All staff must understand their responsibilities
 6. All must understand and comply with the law

3. SCOPE

- 3.1 This policy seeks to ensure that care for all trans people, including non-binary and non-gender people is provided at all levels of service provision and employment throughout Mersey Care NHS Foundation Trust . It includes All people employed by the Trust, volunteering or working in the name of the Trust.

4. DEFINITIONS

- 4.1 **Gender:** gender encompasses gender identity (see below) and the social gender role/expression which reflects the underlying identity. Social gender is the gender in which an individual lives their day to day life. This is likely to affect the name they choose and the way they dress and express themselves socially. (Here, insert a table to outline any key terms and their definitions used in the document.
- 4.2 **Gender Identity:** Gender Identity describes the psychological identification of oneself as a boy/man or a girl/woman; these are 'binary' identities which describe the majority of the population and create our 'social construct'. However, a significant number of people have identities that do not conform to this model, and may be anywhere in between or outside these descriptions here on the gender spectrum between or outside these binary identities. These are described as 'non-binary' and 'non-gender' identities (see below).

- 4.3 **Gender Recognition Act 2004:** Those who have changed their gender role for at least 2 years and intend to live permanently according to that role, may obtain legal recognition in the form of a Gender Recognition Certificate (GRC) which entitles them to a new birth certificate. You must never ask a person if they have a GRC. If, as part of your job, you learn that a person is Trans*, and you pass on that 'protected information', without permission of the person concerned, this would be a breach of the person's human rights. If the person has a GRC, this could be a criminal offence.
- 4.4 **Sex:** Sex refers to the male/female/intersex biological development. In an infant, the sex is judged entirely on the genital appearance at birth. It is assumed, not always correctly, that other biological factors, chromosomes, genes, reproductive organs and brains, are consistent with the genital appearance but this is not always the case.
- 4.6 **Intersex:** There are a number of intersex conditions. Biological sex differentiation is not consistent in intersex people. In a few cases this leads to genital appearance at birth being ambiguous – neither clearly male nor female. Other intersex conditions may involve chromosomal, hormonal and other physical anomalies. Sometimes these remain undiagnosed for many years. Occasionally, assumptions made at, or around birth, about how a child will identify, are wrong. Individuals in this situation may have to make gender adjustments later.
- 4.7 **Trans/Trans*:** is an all-encompassing term, short for 'transgender' and generally accepted by the Trans* community. It is considered an umbrella term for all people who cross gender boundaries whether permanently or not. Trans with the asterisk, Trans* is used by some to emphasise inclusion of all groups.
- 4.8 **Transgender:** Currently used as an inclusive term describing all those whose gender expression does not completely match the sex assigned at birth.
- 4.9 **Non-Binary Identities:** Some people may experience a gender identity which is both masculine and feminine, different mixtures of both at different times, or even fluid (fluctuating). Pronouns will usually be gender neutral such as 'they', 'ze', 'ey' or other identifiers.
- 4.10 **Trans* men and Trans* women:** The expression Trans* is often used to describe transgender in its broadest sense. Sometimes its use is specific; for instance, those assigned female at birth and identifying as men may be referred to as Trans* men; and those assigned male at birth and identifying as women may be referred to as Trans* women. Sometimes, people in this situation, after having transitioned, may identify simply as men and women.
- 4.11 **Transsexual:** Is a term now generally considered out-dated although some people still use it to describe themselves. It still appears in legal documents and some medical texts. It is usually associated with those whose gender dysphoria is experienced to the degree that medical intervention is undertaken to align physical characteristics of the body with the gender identity. Never describe a person as 'a transsexual'; they are transsexual people.
- 4.12 **Gender reassignment/Sex reassignment treatment:** These terms may be used as general descriptions of the medical interventions that support transition. These include

hormone replacement therapy (HRT) to modify secondary sex characters, surgery to alter primary sex characteristics; permanent hair removal for Trans* women; Speech and Language Therapy (SLT) mainly, but not exclusively for Trans* women, and Trans* feminine people.

- 4.13 **Real Life Experience:** Transition to live in accordance with the 'affirmed' gender in all aspects of one's life is sometimes referred to as the real life experience (RLE). It means that in all areas of one's life, within the family, at work, in leisure pursuits a Trans* woman would live as a woman, or a Trans* man, as a man. It is less clear what this would mean for non-binary people whose presentation may not be clearly masculine or feminine. A 12 month period of living of RLE is usually required before the individual is referred for surgery. In reality, it is usually much longer than this because the waiting lists are long. It is not necessary to transition to live according to the affirmed gender in order to access hormones.
- 4.14 **Transition:** Is the term used to describe the point at which a permanent change of gender role is undertaken, in all spheres of life - in the family, at work, in leisure pursuits and in society generally. Some people make this change gradually, however, others emerge overnight. It is the moment when social changes are made to names, pronouns and titles change, at least unofficially. Official name and gender marker change may be undertaken later.
- 4.15 **Transphobia:** A fear and dislike of Trans* people, which can lead to hatred resulting in verbal or physical attacks and abuse.
- 4.16 **Sexual Orientation:** Is a separate issue from gender identity. Trans* people may be gay, lesbian, bisexual, heterosexual or, occasionally, asexual. Their sexual orientation usually remains the same through the transition process, but it may change. People who are attracted to women may remain so, or they may feel more connection with men; or vice versa.
- 4.17 **Stealth:** describes the situation where a person is not known to be Trans*, or recognised as having a Trans* history.
- 4.18 **Dead-naming:** this describes the inappropriate use of names used before transition, rather than the current name used by the Trans* person.

5. DUTIES

- 5.1 **The Trust Board** will ensure that all managers are accountable for the promotion and implementation of this Policy. The Trust Board will monitor progress on equality, diversity and human rights issues and initiatives on a regular basis. It will ensure that individuals are treated with dignity and respect as both employees and service users. The Board will ensure that the Trust's website carries clear messages regarding the inclusive employment environment, with reference to all protected characteristics. The Board will undertake oversight of staff awareness-training with regard to Trans* work colleagues and for people who use services.
- 5.2 **The Director of Workforce** has specific responsibility for monitoring the effectiveness of this policy and deciding on appropriate actions in response to any needs identified in relation to staff in consultation with Staff Side Representatives.
- 5.3 **Trust Managers** hold responsibility for ensuring the practical application of this Policy and for the incorporation of its principles into all other Trust policies and procedures. Managers should be aware that they will be expected to positively promote high equality standards, in line with the requirements of the Equality Act 2010 which includes the additional protection for Trans* people. To refer issues to the equality and Human rights lead for support and advice.
- 5.4 **Clinical Governance Forums** have a specific responsibility to ensure that clinical development; planning and strategy actively consider and promote equality, diversity and human rights.
- 5.5 **The Human Resources** function has specific responsibility to ensure the promotion of equality and inclusiveness through its employment practices, policies and procedures, and in supporting the application of this policy. It will ensure that any member of staff who identifies as a Trans* person within the recruitment process or as an employee will be treated with dignity and respect and that they adhere to the specific confidentiality issues.
- 5.6 **Equality and Human Rights Lead** will provide support and advice to all managers, clinical leads and HR staff to ensure that the services provided to people is appropriate, legally compliant and delivered with respect and dignity.
- 5.7 **All staff** have a personal responsibility for the application of this policy on a day-to-day basis. This means they should not undertake any acts of discriminatory practice in the course of their employment. All staff should positively promote high equality standards in the course of their employment wherever possible. All staff have a responsibility to bring any potentially discriminatory practice to the attention of either their line manager, the human resources department or relevant Trade Union/Professional Associations. This includes reporting behaviour such as inappropriate jokes and 'banter'. This may be reported using the DATIX system.
- 5.8 **Service Users/Carers/Visitors** should, if necessary, be alerted to the Trust's policy of respect and inclusion. They will be expected to recognise and comply with the principles set out in this policy whilst on the Trust's premises or whilst receiving care originating from the Trust. Those who are verbally or physically abusive or who make derogatory statements that are of a

discriminatory nature to any staff or other people using services should be aware that they will be challenged about their behaviour.

See HR09: Zero Tolerance – Implications for Practice and the Management of Abuse, Discrimination and Violence Policy.

- 5.9 **Contractors and their staff** will have a contractual obligation to comply with the Trust's policy in respect of trans* people, including, non-binary and non-gender individuals. This will be the subject of contract compliance monitoring. Any discrimination, harassment or other inappropriate behaviours will be dealt with as breaches of contract.

6. PROCESS

6. Policy Standards

- 6.1 All Trans* people will be treated in their acquired gender for all purposes of daily living from the point they commence a real life test to live and work in their new gender role.
- 6.2 All employees must observe the privacy of people afforded by the Gender Recognition Act. Breaches of confidentiality will be treated in accordance with the Trust's Disciplinary Policy and Procedure.

6.3 Discrimination

- 6.3.1 In terms of equality and diversity this policy is relevant to all Trans* people regardless of age, disability, ethnicity, gender, religion or belief, sexual orientation or marital status.
- 6.3.2 Employers are automatically liable for discriminatory actions by anyone acting on their behalf, whether or not it was done with their knowledge, unless the employer can show that they had taken all reasonable steps to prevent such actions. Any prejudice or discrimination must therefore be actively dealt with by management and must not be left to the individual to deal with themselves.
- 6.3.3 Discriminatory behaviour will be dealt with using Trust policy and procedures. It does include formal action in line with the Trust's disciplinary or capability procedures for Trust employees; and other action in relation to other workers, which may result in the termination of an assignment, placement, secondment or honorary arrangement.
- 6.3.4 Discrimination experienced by staff from service users, carers or visitors will be dealt with using the HR09: Zero Tolerance - Implications for Practice and the Management of Abuse, Discrimination and Violence Policy
- 6.3.5 Any experience of discrimination should be reported to the person in charge of a service area and an incident report completed on the DATIX system.

6.4 Challenging

- 6.4.1 Discriminatory language and behaviour is unacceptable and will not be tolerated by Mersey Care NHS Foundation Trust. All staff have a duty and responsibility, not only to abide by non discriminatory practice but to challenge discriminatory language, behaviour or actions.

6.5 Sharing Personal Information

- 6.5.1 Under Section 22 of the Gender Recognition Act 2004 it is illegal for staff to share information regarding someone's Trans* status

(For clarity see www.opsi.gov.uk Section 22 of the Gender Recognition Act 2004)

6.5.2 Anyone who, in their professional capacity, acquires knowledge of a Trans* person's history and knows, that the person has a Gender Recognition Certificate (GRC), or new birth certificate and passes on that information to a third party without the consent of the person concerned can be prosecuted and fined up to £5000 and/or be jailed for up to six months. Trans* people have no obligation to disclose whether or not they have a Gender Recognition Certificate.

6.5.3 As good practice Mersey Care NHS Foundation Trust will treat individuals as if they have a GRC.

6.6 Procedure regarding employees

6.6.1 Recruitment and selection

6.6.2 We welcome those who are Trans* or who have a Trans* history. And encourage them to apply for jobs with the Mersey care NHS Trust. All those involved in the recruitment and selection process, including staff and service user and carer representatives are aware of their responsibilities to select fairly and without prejudice.

6.6.3 Trans* people are not required to inform a new employer that they have transitioned in the past. However a designated person in HR will need to know in case the individual's insurance policy would be invalidated and they became personally liable.

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

6.6.5 All processes that are required for a successful applicant should be completed assuring confidentiality, dignity and respect. If a Disclosure and Barring Service (DBS) report is required there is a specific process in place. Contact may be made with the DBS's Sensitive Applications Team who will monitor the application. If the DBS check is going to reveal information in the applicants previous gender/name that would be printed on the DBS certificate, the office will contact the individual and discuss the options available.

6.6.6 If there is no criminal information recorded, then the DBS will remove previous names / gender from the DBS record so that they do not appear on the certificate provided
For more information, contact the DBS's Sensitive Application's Team on:
Phone: 0151 676 1452; Email: sensitive@dbsgsi.gov.uk
Address: The Sensitive Application Team, Customer Services,
Disclosure and Barring Service, PO BOX 165, Liverpool L69 3JD

6.6.7 Those 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

Trust 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.

6.6.8 Occupational health clearance process will be completed following the Trusts guidelines in relation to maintaining dignity, respect and confidentiality of a Trans*, Non binary and non-gender employee.

6.6.9 Any potential candidate who wishes to enquire about Mersey Care NHS Foundation Trust policy on recruiting Trans*, Non binary and non-gender employees should be referred to this policy as well as to the Equality Policy and Procedure (HR 10).

6.7 Transition of a member of staff in the Workplace

6.7.1 Mersey Care Trust is committed to supporting all its employees with regard to personal circumstances that may impact on work.

6.7.2 Once an employee has decided they wish to transition it is essential that they are able to meet with an appointed advisor, who may be their line manager or a member of the Human resources department to discuss with the individual how they wish to handle the transition. This can also include a union representative or colleague for support if the individual wishes to have this in place.

6.7.3 It is essential for the Trust to develop a Memorandum of Understanding with the employee to detail when, where and how support will be provided and that this is drawn up together to ensure that all support is mutually developed and agreed. (Appendix 1)

6.7.4 The Memorandum of understanding will include all relevant actions to be taken by the employee, line manger and relevant staff across the Trust which will include communication, data protection, relationships with colleagues, support if discrimination is experienced and the implications this may have within the role of the employee.

6.7.5 Support may also include time away from work (Leave for personal and family reasons policy) for outside support networks, counselling or medical issues; dealing with the reactions of other employees; educating employees about the issues involved and confidentiality. Trans* people have the right to call a halt to the transition process and choose to remain in a more gender ambiguous identity at any time if they wish.

6.7.6 If the employee also has a disability then 'reasonable adjustments' would need to taken into account or existing arrangements would need to be transferred to a new post in line with the Disability Discrimination Act if the need for redeployment is identified.

6.7.7 Support Mechanisms. There may be a need for additional support for an individual within the transition process. This support may also encompass individual support needs; including

additional diversity issues such as age, culture, disability, ethnicity, religion or sexual orientation. This support can include:

- a) **Human Resources** – an appointed advisor from within the Human Resources department identified at an early stage to offer support; put in place practical changes that need to be made to an individual's post or personal records; to support positive working relationships between the individual and wider team members if relevant. Any qualified Human Resources professional should have the necessary knowledge and awareness required to deal with such personal and sensitive issues.
- b) **Occupational Health** a referral to occupational health, may be considered by the individual, their manager or the human resources advisor for additional support and advice concerning any counselling needs or advice regarding the medical process of the transition. Managers may also need advice regarding the needs of the individual and on how to support changes that may need to be made within the team or work environment. Time off work- As per the Trust's absence policy, any absence from work for medical requirements would need to be covered by a medical certificate.
- c) **Staff Support** -The Staff Support Service offers support to all staff who work for Mersey Care NHS Trust. These services offer a chance for staff to talk through things that are on their mind with a counsellor, who will be non-judgemental and impartial. This service is provided to help staff with both personal and work issues. Staffs access the service by calling: 0151 330 8103.
- d) **Equality and Human Rights Team** – Mersey Care Trust has a number of people who have specialist knowledge of issues in relation to Equality and Human Rights that can be used a resource
- e) **Lesbian, Gay, Bisexual and Transgender (LGBT) staff support network.** –Information on staff portal, Equality pages of the Trust website or Via the Equality and Human Rights Team
- f) **Union Support** – Union Members may find it useful to contact their Unions for advice and support. Please see appropriate Union websites for details or contact Mersey Care staff side staffside@merseycare.nhs.uk or 0151 471 7847

6.8 Confidentiality, Records and Information Sharing

6.8.1 All personnel records must be updated at the start of the transition process. At this point, the member of staff will be able to apply for a driving license and passport in their new acquired gender. All documentation and correspondence relating to a person who has transitioned will use only their present name, pronoun and title.

6.8.2 A new personnel file will be created to ensure confidentiality. A record of pertinent employee information will be completed and retained within the new personnel file with no reference to the pre transition name, gender that will indicate the individual's transition. All information relating to the individual that does not indicate the transition can be included in the new file.

- 6.8.3 The 'old' personnel file with documentation that cannot be altered to reflect the individual's transition details must be stored within a strict confidential secure setting with limited access. This should be accessed with the individual consent only in urgent circumstances that prevent this from occurring to prevent a breach of protected information.
- 6.9.4 Employees that are professionally registered are advised to contact their professional bodies to find out the process in terms of name changes etc. Where the Trust 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. Where it is possible to reissue documents showing only the new name, title and pronoun, this should be done.
- 6.8.5 To ensure the Trust does not breach section 22 of the Gender Recognition Act 2004 which states it is an offence to disclose 'protected information' (information about a person's gender before it becomes an acquired gender) as a part of the process to obtain a Gender Recognition Certificate all Trans* people should be treated as if they have one.
- 6.8.6 This ensures that anyone obtaining 'protected information' as part of their job in an 'official capacity' will not be committing a criminal offence if they maintain this confidential, unless they are authorised to disclose this by the Trans* individual concerned.
- 6.8.7 If any correspondence is to be sent to a Trans* person's home address, checks should first be made with the person concerned to establish whether the old or the new name should be used. Families or house-mates may not be aware of the situation at that point.
- 6.8.8 If giving a reference, the reference should be in the name which will be used in the new job and must not disclose a former name. It may sometimes be necessary for a Trans* person to disclose a previous identity in order for references from past employers to be obtained. In these cases, strict confidentiality and respect for dignity should be applied.
- 6.8.9 The line manager should also ensure that all references such as telephone directories, email address and employment details reflect the acquired gender of the person.

7. Procedure regarding people using services

- 7.1 Fair & Equal Access: Mersey Care NHS Trust is committed to equality for all communities and to providing services which are accessible, appropriate and which recognize the diversity of people, their needs and choices.
- 7.2 Care provision should be of a high quality and be considered in line with the Human Rights FREDA principles of fairness, respect, equality dignity and autonomy .To deliver a patient led service Mersey Care NHS Trust will ensure that services and care delivery recognise the needs of each individual service user.
- 7.3 The Trust recognises that Trans*,Non binary and non-gender people using Mersey Care's services may experience discrimination in the forms of bullying and harassment. Mersey Care NHS Foundation Trust is clear that it does not tolerate discrimination directly or indirectly against any person including Trans*,Non binary and non-gender people.
- 7.4 If it is alleged that someone using Mersey Care's services is subject to discrimination this should be reported, recorded within DATIX as an incident and the procedure outlined in the bullying and harassment policy should be adhered to.

7.5 Single Sex Facilities

- 7.6 Mersey Care NHS Trust will ensure that Trans*, Non binary and non-gender people are accepted and treated at all times as the gender in which they permanently present.
- 7.7 Part of the Transition process involves a Trans* person living as there acquired gender before undergoing surgery, if surgery is the desired outcome. Living in a different gender will obviously include using single sex facilities. Trans* people (like everyone else in Britain) can use toilets or changing facilities appropriate to their gender presentation with or without a Gender Recognition Certificate.
- 7.8 In instances where a Trans* person is admitted to inpatient services, protecting their dignity, safety and privacy must be paramount; in such circumstances decisions, such as ward/room allocation, should be made in conjunction with the service user themselves. The process of assigning a person to a ward **must** begin from the position of the gender the individual is living within. Any issues relating to dealing with possible discrimination the person may experience and any possible risk issues must be dealt with from that position. If there are clinical/risk issues which require a move from this position these **must** be recorded in detail and recorded as an incident on DATIX.
- 7.9 The Trust Equality and Human Rights lead is available for support and **must** be contacted if there is any reason for some one to be moved from a service area that support people within the gender they are living, there is a difference of opinion that is causing difficulties, the person receiving the service is unhappy about what is happening to them or other issues relating to the quality of the service the Trust is providing to the individual.

7.10 Records and Information sharing.

- 7.11 Service users have a right to expect the same high standards of confidentiality that apply to their care and treatment also apply to information on their Trans* status. Mersey Care staff must ensure that this standard is maintained.
- 7.12 This supporting procedure is written with the understanding that staff who utilise it, do so in tandem with Trust policy IT06 "Health Records Policy & Procedures" and at all times with the person who is using our services.
- 7.13 Medical record keeping for Trans*, Non binary and non-gender people can be a challenge for clinicians and staff. Transgender status forms part of an individual's history but does not necessarily, and often is not relevant, to why they are accessing services.
- 7.14 It is good practice to clarify with the person using our services their preferred name and gender pronoun if there is a risk of ambiguity.
- 7.15 All Trans* people going through transition should be informed about the Trust's Privacy procedure for Trans* people after they have completed transition.
- 7.16 Once a Trans* person has changed their name all subsequent records must reflect this. This should always be done as a matter of courtesy and is not dependent on having a Gender Recognition Certificate. Trans* service users have a right to change their name and gender on their NHS records and would be able to bring a civil claim against a Trust which refused to accede to their request.
- 7.17 It is envisaged that access to former health records with reference to previous gender will be restricted and only shared with the service user's written consent. A new NHS Number should be issued with no reference to the previous name and gender.
- 7.18 The person may have told their GP, or directly informs the CCG, that they are transitioning and that in future they would be known by their new name and gender. They can write a "statutory declaration", they may have a deed poll document, or they may simply make the request. This request will need to be in writing – or a format of communication appropriate to the individual, signed/verified by the individual
- 7.19 The GP writes to the Registration Office at the CCG. The GP may write a letter of support confirming the gender role change and that this change is intended to be permanent, but this is not a requirement
- 7.20 The Registration Office then writes to the Personal Demographics' Service National Back Office. The National Back Office will create a new identity with a new NHS number and requests the records held by the patient's GP. These records are then transferred to the new identity and forwarded to the GP. This will always happen if someone has a Gender Recognition Certificate.

- 7.21 On receipt, the GP surgery changes any remaining patient information including the gender marker, pronouns and names
- 7.22 The existing health records should be withdrawn and revise the Health Record to remove all reference to the previous name and gender (do not record previous name as an alias)
- 7.23 Withdrawn legacy case notes must be held in a secure storage by a nominated officer who will only access with proven authorisation by the service user or clinician providing justification to access the records.
- 7.24 There is thus a need for a summary/chronology to be available for health professionals. Any summary which includes reference to Transgender status must be done with specific consent as each disclosure of this information could otherwise breach the Gender Recognition Act 2004 and may constitute a criminal offence.
- 7.25 There is a risk that the form of the summary/chronology may in itself identify the transgender status of the service user. The standard form of other case summaries etc., as produced for other purposes, should therefore be followed.
- 7.26 Electronic patient records must be password protected or placed in a password protected electronic envelope which can only be accessed with authorisation to do so.
- 7.27 Any Data Protection Act application for subject access must be referred to the Trust Health Records Manager.
- 7.28 Any application for disclosure received from the courts or police must be referred to the Trust Health Records Manager.
- 7.29 All correspondence created by the Trust staff must make no reference to the previous identity and gender.
- 7.30 Any referrals received from General Practitioners or healthcare professionals must be vetted by the Team Manager or Referral Administrator and if reference to the previous identity or gender is not directly relevant to the referral then it should be returned to the source of referral with an explanation that this constitutes a breach.
- 7.31 Any breach must be recorded through Datix.
- 7.32 Professionals need to adopt a practice of reference to present gender in health records entries. Identity comment should be avoided about trans* status unless this is a specific and immediate issue in treatment, e.g. "X is a 47 year old trans woman" should be recorded as "X is a 47 year old woman".
- 7.33 Recording of Trans* status must only be made with the specific written consent of the person using our services. This is most likely to be relevant when recording for example:-

- Past medical/mental health history
- Relationship/family issues
- Specific issues in relation to assessment and treatments for Gender Reassignment

7.34 NB: In all cases it should be assumed that the service user is in receipt of a Gender Recognition Certificate.

7.35 Trans* people may stop the medical process at any time and still choose to remain in their preferred gender. In these circumstances they should be treated as having completed transition.

7.36 If further advice is required then please contact the Trust Equality and Human Rights Lead.

7.4 Gender Dysphoria Protocol/ Transgender Pathway

7.41 NHS England has an agreed interim protocol which details how individuals can access services to support the transition –gender reassignment process. *NHS England Interim Gender Dysphoria Protocol and Service Guidelines 2013/14*. There is a local Transgender Pathway which sets out the process for people living within Liverpool, Sefton and Kirby. There is a Trans Support Service (TSS) commissioned from Liverpool Community Health (LCH) NHS Trust for Liverpool, Sefton and Kirby which offers support to people themselves and to GP's to navigate the process.

- **External Organisations** – The following is a small list of external organisations that can offer support and advice on gender transition issues.
 - LCH Trans Support Service (TSS) 0151 284 2500 ext. 117
 - Gender Trust - <http://www.gendertrust.org.uk/>
 - Press for Change - www.pfc.org.uk
 - www.transgenderzone.com
 - ACAS - www.acas.co.uk – best practice advice for employers
 - Equality and Human Rights Commission - www.equalityhumanrights.com
 - Gender Identity Research and Education Society - www.gires.org.uk

8. CONSULTATION

This policy has been developed in conjunction with:-

External

Gender Identity Research and Education Society

Members of the Trans community

Liverpool Mental Health Consortium LGBT Mental Health Strategy Group

Internal

Divisional clinical departments

Human Resources department

Staff side organisations.

Medical Records Lead

Medical staff

9. TRAINING AND SUPPORT

9.1 Specific training for Trans*, Non binary and non-gender people is available from the Equality and Human Rights Department and will be provided at least annually and on request for specific areas.

10. MONITORING

10.1 The monitoring of compliance to this policy will be completed by the Equality and Human Rights Lead and the Divisional Equality advisors through a bi-annual audit.

10.2 This will be reported to the Equality and Human Rights Subcommittee.

11. EQUALITY AND HUMAN RIGHTS ANALYSIS

Equality and Human Rights Analysis

Title: Gender Realignment Support Policy

At Review Nov 2017 – Note change of policy name to

**Supporting Trans*, Non binary and non-gender employees
and people who use Trust services**

Area covered: Corporate

What are the intended outcomes of this work?

- To set the standards for all areas across the Trust in relation to supporting service users and staff at any stage of the gender realignment transition process.
- To ensure the Trust's commitment to fair and non discriminatory approach to individuals who have this protected characteristic.
- To enhance and promote high quality services which are responsible to the different communities we serve, individual needs and respects peoples human rights

Review of policy -7th November 2017 – noted the inclusion of a wider definition of transgender within the outcomes of this work.

Who will be affected? Service Users, Carers, staff, volunteers

Evidence

What evidence have you considered?

This is the first Trust policy relating specifically to transgender and the author has consulted with local Trans* communities and accessed many sources in relation to transgender to ensure compliance with research and evidence. These can be found in the reference section of this document. HR 10 Equality Policy has been considered in relation to this analysis.

Review of policy -7th November 2017 – no change.

Disability including learning disability

Page 4 draws attention to information from Gires around mental health issues experiences by Trans* groups.

This policy upholds non-discrimination in relation to disability and the need for reasonable adjustment (disability related).

Review of policy -7 th November 2017 – no change.
<p>Sex This policy upholds non-discrimination in relation to sex. Awareness is raised in relation to use of accommodation and use of toilet facilities to ensure discrimination does not take place on the grounds of sex. Change of working conditions is also raised to ensure that a person transitioning is able to work to their maximum potential.</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Race This policy upholds non-discrimination in relation to race.</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Age This policy upholds non-discrimination in relation to age.</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Gender reassignment (including transgender) This policy specifically relates to this protected characteristic and covers all aspects in relation to staff training, confidentiality and communications.</p> <p>Review of policy -7th November 2017 – noted the inclusion of the wider definition of transgender.</p>
<p>Sexual orientation This policy upholds non-discrimination in relation to sexual orientation</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Religion or belief This policy upholds non-discrimination in relation to religion or belief.</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Pregnancy and maternity This policy upholds non-discrimination in relation to pregnancy and maternity.</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Carers This policy involves carers in relation to issues around transgender.</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Cross Cutting As mentioned in above protected characteristics.</p> <p>Review of policy -7th November 2017 – no change.</p>
<p>Other identified groups None</p>

Review of policy -7th November 2017 – noted the wider definition of transgender.

Human Rights	Is there an impact? How this right could be protected?
This section must not be left blank. If the Article is not engaged then this must be stated.	
Right to life (Article 2)	This article is not engaged Review of policy -7 th November 2017 – no change.
Right of freedom from inhuman and degrading treatment (Article 3)	This policy aims to protect the person from experiencing an infringement of this article. Review of policy -7 th November 2017 – no change.
Right to liberty (Article 5)	This article is not engaged Review of policy -7 th November 2017 – no change.
Right to a fair trial (Article 6)	This article is not engaged Review of policy -7 th November 2017 – no change.
Right to private and family life home and correspondence (Article 8)	This policy protects the person under “Caldicott” and Section 22 of the Gender Recognition Act 2004. 6.6.1 Clear information relating to records and information sharing supports this article. Review of policy -7 th November 2017 – no change.
Right of freedom of religion or belief (Article 9)	This policy aims to protect a person in relation to religion or belief. Review of policy -7 th November 2017 – no change.
Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)	This article is not engaged. Review of policy -7 th November 2017 – no change.
Right freedom from discrimination (Article 14)	This policy aims to protect a person from any form of discrimination. Review of policy -7 th November 2017 – no change.

Engagement and involvement

The formulation of this policy is evidenced by its content that there has been extensive involvement of local trans community groups and information gathering from resources such as the Gender Dysphoria Protocol/Transgender Pathway.

Review of policy -7th November 2017 – noted the engagement of GIRES to support the review of the policy.

Summary of Analysis

Eliminate discrimination, harassment and victimisation

This policy is supportive of elimination of discrimination, harassment and victimisation.

Review of policy -7th November 2017 – no change.

Advance equality of opportunity

6.6.1 Refers to recruitment and selection and the policy HR21 will need to meet the statements made in this policy. This has been addressed by the author who has informed the relevant department of what HR21 needs to include to meet this policies statement.

Review of policy -7th November 2017 – no change.

Promote good relations between groups

This policy aims to raise awareness to promote relations between groups. It aims to improve access to and quality of care to promote positive experiences and improve relations between groups.

Review of policy -7th November 2017 – no change.

What is the overall impact?

The overall impact of this policy is positive for individuals and promotes compliance with the Equality Act 2010.

Review of policy -7th November 2017 – no change.

Addressing the impact on equalities

This can be achieved by the evaluation and monitoring of issues relating to both service users and employees regarding transgender issues. Frequent reviews of the policy following evaluation and monitoring.

Review of policy -7th November 2017 – no change.

Action planning for improvement

See Action Plan

For the record

Name of persons who carried out this assessment:

Barbara Rafferty Equality and Human Rights Advisor
George Sullivan Equality and Human Rights Advisor
Pippa Georgeson Equality and Human Rights Assistant Advisor

Review of policy -7th November 2017 – Meryl Cuzak Equality and Human Rights Lead
Gina Kelly IG Officer/Trust Health Records Manager

Date assessment completed:

14th October 2014
Review of policy -7th November 2017

Name of responsible Director/Lead Trust Officer

Dr. D Fearnley
Review of policy -7th November 2017 – Amanda Oates.

Date assessment was signed:

15th October 2014
Review of policy - 7th November 2017

Action plan template

This part of the template is to help you develop your action plan. You might want to change the categories in the first column to reflect the actions needed for your policy.

Category	Actions	Target date	Person responsible and their Division
Involvement and consultation	Recruitment and Selection HR 21 to meet the criteria in 8.1.1 in Gender Realignment Policy	Dec 2014	Human Resources COMPLETED

Memorandum Of Understanding
 Manager or Appointed advisor:

Employee:

Date:

This memorandum of understanding details the agreement of process to be undertaken it will include specific information relating to when, where, how and who will act in agreement to support

Administration processes	
Change of name and personal details and social gender	
Change of name and personal details and social gender	
Change personal details and information within IT systems	

Record keeping of sensitive information	
Who needs to be informed: line manager, colleagues, other staff and people served within the role?	
Communication processes	
How should people be informed?	
By whom	
When	
Role	

Impact on role	
Possible redeployment	
Dress code requirements- provision of uniform if needed	
Timing for transition	
When gender specific dress will change	
When to change use of single sex toilets / changing facilities in their new gender.	
On-going requirements.	

The expected timescale for medical procedures (if to be undertaken) and any time off required for treatment.(HR07: Management of attendance)	
Duties within the role that should not be undertaken at specific times within the process	
Risk assessments to be completed if needed	
Change of job if required due to medical procedures	
What the implications are for pensions	