

Yorkshire and Humber Protocol-

Providing Hospital Services To Trans Patients

Introduction

Yorkshire and Humber Regional Equality and Diversity leads agreed to set out a clear protocol to support the provision of high quality care to Trans people using NHS services in the region.

This protocol is based on guidance issued by the Equality and Human Rights Commission (EHRC) and on appendix D¹ of the May 2009 communication from the Chief Nursing Officer and Director General NHS Finance, Performance and Operations regarding elimination of same sex accommodation.²

The protocol also reflects changes associated with enactment of the Equality Act 2010.

This protocol can be used as a template and adapted to develop local policies or used as it is to inform good practice.

Audience

- All clinical staff providing inpatient services
- Managers of clinical services
- Governance leads
- Trans patients

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- ⇒ Lee Gale – TM Training
- ⇒ Members of the Yorkshire and the Humber Equality leads - Trans Protocol Sub Group
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¹ PL/CNO/2009/2 was superseded by PL/CNO/2010/3 but the annexes of PL/CNO/2009/2 remain current

² DOH (2009) Eliminating Mixed Sex Accommodation ref PL/CNO/2009/2 online

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_098893.pdf

1) Legal Framework

i) The Equality Act 2010

The Equality Act 2010 (The Act) protects people on the basis of **gender reassignment** from direct and indirect discrimination and harassment³. This includes discrimination by *association* and discrimination against people *perceived* to have the protected characteristic of gender reassignment.⁴

The Act also places a proactive duty on public organisations to promote equality of opportunity, foster good relations and eliminate unlawful discrimination between people who have the protected characteristic of gender reassignment and people who do not⁵

ii) Gender Recognition Act 2004

The Gender Recognition Act 2004 provides transsexual people with the opportunity to obtain legal recognition in their acquired gender by being issued with a gender recognition certificate (GRC). Anyone with a GRC will be legally recognised 'for all purposes' as their acquired gender. When someone has a GRC any disclosure without consent of information about that person's gender history, which has been obtained in an official capacity is an offence.⁶

2) Definitions

i) Trans

The booklet **Living My Life** gives a simple definition of 'trans';

*'A trans person is someone who feels that their gender identity does not correspond to the one they were given at birth ... The word 'trans' is an umbrella term for all people who cross traditional gender boundaries – permanently or periodically'*⁷

The aim of this protocol is to ensure that clinical responses are patient-centred, respectful and flexible for people who are considering undergoing, have undergone, or are in the process of undergoing gender reassignment. This principle is clearly defined in the EHRC's same sex accommodation guidance which underpins this protocol. The principle of respect applies to all, including people who choose to cross dress for reasons that are not associated with gender reassignment, however, this protocol applies to people who have the protected characteristic of gender reassignment, as defined by the Equality Act 2010, i.e. people who are proposing to undergo, are undergoing or have undergone a process (or part of a process) of gender reassignment.

ii) Gender Reassignment

The Equality Act 2010 states that:

(1) 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.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.⁸

³ Equality Act s.13,s.19 and s.26

⁴ Equality Act s.13

⁵ Equality Act 2010 s.149

⁶ Gender Recognition Act 2004 s.22

⁷ Living My Life - published by the centre for HIV and Sexual Health in partnership with TransBareAll

⁸ Equality Act 2010 s.7

iii) **Discrimination**

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

iv) **Harassment**

A person (A) harasses another (B) if —

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) The conduct has the purpose or effect of —
 - (i) Violating B's dignity, or
 - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

3) Guidance

The Government Equality Office guidance (p. 4) sets out the circumstances whereby a person is protected under the law on the basis of gender reassignment. This Guidance states:

The process of gender reassignment may involve different stages, from change of name, title and/or appearance through to surgical intervention. But the Act does not require a person to be under medical supervision to be protected, so a woman who decides to live permanently as a man but who does not undergo any medical procedures will be protected.

A wide range of people are included in the term 'trans', 'transgender', such as people who cross dress only on an occasional basis and other people who may identify as neither men nor women but somewhere in between. Only transsexual people are explicitly protected under the Act. However, if a person who cross-dresses, for example, is discriminated against because they are wrongly thought to be transsexual, they will be protected under the Act.

4) Providing Hospital Services to Trans Patients - Principles

- i) Clinical responses should be patient centred, respectful and flexible towards all Trans people regardless of whether they live continuously or temporarily in the gender role that is opposite to their natal sex.
- ii) Accommodating Trans people in line with their preferred gender is not optional and must be the starting point of any interaction with a Trans person. Clinical responses should be patient centred, respectful and flexible towards all Trans people regardless of whether they live continuously or temporarily in the gender role that is opposite to their natal sex.
- iii) There may on occasion be situations where providers and commissioners find that their duty to recognise and respond appropriately and sensitively to an individual's chosen gender conflicts with other responsibilities, such as the need to commission/provide safe and effective services (as with medium and/or low secure services). In these situations the relevant Case Manager should consult with appropriate clinical professionals in both fields (for example Gender Dysphoria and Forensic Mental Health) and make an appropriate recommendation regarding placement following this advice and following discussion with the service user.

5) Provision of Inpatient Accommodation⁹

- i) Trans people should be accommodated according to their gender presentation (the way they dress, and the name and pronouns that they currently use)¹⁰. Different genital or

⁹ (Adapted and developed from CNO and EHRC guidance)

¹⁰ Quoted from EHRC Guidance document: Provision of goods, facilities and services to trans people, p23

breast sex appearance is **not** a bar to this, since sufficient privacy can usually be ensured through the use of curtains or by accommodation in a single side room adjacent to a gender appropriate ward.

- ii) This approach may only be varied under special circumstances where, for instance, the treatment is sex-specific and necessitates a Trans person being placed in an otherwise opposite gender ward. Such departures should be proportionate to achieving a 'legitimate aim', for instance, a safe nursing environment.
- iii) It does *not* depend upon their having a gender recognition certificate (GRC) or legal name change.
- iv) It applies to toilet and bathing facilities (except, for instance, that pre-operative trans people should not share open shower facilities).
- v) Views of family members may not accord with the Trans person's wishes, in which case, the Trans person's view takes priority.
- vi) Service providers have a legal duty to ensure that people are protected from discrimination or harassment. This includes not tolerating negative views, comments or opinions of other patients or members of staff.
- vii) Confidentiality is essential. Discussions related to accommodating a person sensitively and meeting their needs should be undertaken only with relevant persons and with the consent of the Trans person.
- viii) Where treatment is 'sex specific' how to sensitively accommodate a trans person of the opposite sex should be discussed with the person involved and a joint decision made about how to proceed. This should be done to accommodate the wishes of the person not the convenience of staff.
- ix) If staff are unsure of a person's gender, they should, where possible, ask **discreetly** where the person would be most comfortably accommodated.
- x) If upon admission, it is impossible to ask the view of the person because he or she is unconscious or incapacitated then, in the first instance, inferences should be drawn from presentation and mode of dress.
- xi) No investigation as to the genital sex of the person should be undertaken unless this is specifically necessary in order to carry out treatment.
- xii) Post-operatively, or while unconscious for any reason, those trans women who usually wear wigs, are unlikely to wear them, and may be 'read' incorrectly as men. Extra care is required so that their privacy and dignity as women is appropriately ensured.
- xiii) Trans men whose facial appearance is clearly male, may still have female genital appearance, so extra care is needed to ensure their dignity and privacy as men and vice versa.

6) Practical Steps and Adjustments

- i) Provide people who are transgender with opportunities to discuss any concerns or specific arrangements to meet their needs.
- ii) Practical steps in services that are sex specific might include:

- (a) Systematically offering the first appointment of the day, so as to avoid the embarrassment of being one man among many women in a waiting area and vice versa.
- (b) Discussing recovery process options with the patient in terms of ward and level of post-surgery care but ensure that the patient is given the ultimate choice.
- (c) With the permission of the patient provide a brief to theatre staff and consider introducing the patient to the nursing and theatre staff.
- (d) Identify a private area for the patient to register their details, rather than in the main reception in front of other people.
- (e) Allocate a separate room, off the main ward, with a 'Do not Disturb' sign to restrict access.
- (f) Use initial and surname on boards rather than first names.
- (g) Allocate a specific nurse to post-operative care in order to maintain privacy.

7) Particular considerations for children and young people

Appendix D of the May 2009 communication ¹¹ states:

Gender variant children and young people should be accorded the same respect for their self-defined gender as are Tran's adults, regardless of their genital sex.

Where there is no segregation, as is often the case with children, there may be no requirement to treat a young gender variant person any differently from other children and young people. Where segregation is deemed necessary, then it should be in accordance with the dress, preferred name and/or stated gender identity of the child or young person.

In some instances, parents or those with parental responsibility may have a view that is not consistent with the child's view. If possible, the child's preference should prevail even if the child is not Gillick competent.

¹¹ DOH (2009) Eliminating Mixed Sex Accommodation ref PL/CNO/2009/2 online
http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_098893.pdf