

Gender Identity Guidance

1. Introduction

1.1 The purpose of this guidance is to set out WMP's approach to gender identity and trans issues and to detail our framework for managing a gender confirmation (or affirmation) process for staff. This document explains the support that will be provided for people who are trans and provides advice and guidance for all employees, in order to help them improve their understanding of gender identity issues and support trans colleagues and service users.

2. Relevant Legislation

2.1 **Equality Act 2010** - Gender reassignment is one of nine protected characteristics within the Act. The definition of gender reassignment within the Act gives protection from direct and indirect discrimination, harassment and victimisation to a person who has proposed, started or completed a process to change their gender or sex.

The Act protects:

- trans people who are not under medical supervision
- people who experience discrimination because they are perceived to be trans
- people who experience discrimination by association because of gender reassignment. For example, it would protect the parents of a trans person from being discriminated against because their child is transitioning.

The Act also places a duty on public sector bodies to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

2.2 **Gender Recognition Act 2004** - This provides a mechanism for someone to be legally recognised in, and gain the rights and responsibilities of, their gender affirmed through gender reassignment i.e. from man-to-woman, or woman-to-man. For example, the right to a new birth certificate if the birth was registered in the UK.

The privacy provision included in the Gender Recognition Act 2004 means that there is no need for a trans person to evidence that they have a gender recognition certificate. It should be assumed that the individual has one and treated accordingly. You don't need to have a gender recognition certificate to be protected under the Equality Act.

It is a criminal offence to reveal, without the person's permission, that they hold a gender recognition certificate or have applied for one. It is also an offence to

disclose “protected information”, such as their previous gender or name, before they got a gender recognition certificate.

2.3 Data Protection Act 1998 and the Human Rights Act 1998 - Gender reassignment and any information relating to an individual’s gender history would constitute ‘sensitive data’ under the Data Protection Act, which means it can only be processed for certain specified reasons as set out in the Act. Employers and colleagues must not ‘out’ an employee or applicant as trans as this would also constitute a breach of Article 8 of the Human Rights Act which gives everyone the right to privacy and family life.

2.4 Other relevant legislation and documentation:

- The Marriage (Same Sex Couples) Act, 2013
- The Public Sector Equality Duty (part of the Equality Act 2010)
- Disclosure Barring Service sensitive applications
- State Pension claims
- HRA Article 8 – The right to a private life

3. WMP’s approach

3.1 WMP is committed to ensuring that all staff and members of the community are treated fairly and have the opportunity to thrive and reach their full potential, regardless of their gender identity. This commitment is underpinned by the Equality Act 2010, which protects individuals who are planning, undergoing or have had a gender transition process from discrimination. We take incidences of discrimination or harassment on the grounds of gender identity very seriously and will take action against such incidences under the relevant staff and public complaints policies and disciplinary codes.

3.2 We are committed to supporting staff who are undergoing or have undergone a transition process, both on an individual level and in terms of increasing understanding of gender identity issues amongst our staff and wider community, through promotion of this guidance. We recognise that transitioning is a very significant step in a person’s life, and will work with staff to put an action plan in place to help manage this process. We also recognise that some staff and members of our community have a gender identity outside of the traditional male female binary and who may also require support.

3.3 We recognise that the impact on an employee with a family member who is transitioning can be considerable, including potential difficulties for them in handling this change to family life. Where an employee has disclosed such circumstances to us this will be treated sensitively and we will aim to provide as much support as the individual needs during this period.

4. Terminology

4.1 Gender identity and trans identities can be complex concepts to understand for people not directly affected by these issues. Whilst we recognise that these are very personal matters, and definitions and terminology will vary, the guidance

below is provided to help improve understanding of gender identity amongst our WMP community.

- 4.2 **Sex** - a person's sex is biological and determined by their organs, hormones and chromosomes. Biological sex will typically be male or female. A small proportion of the population are intersex, which means that their sex cannot be biologically defined as fully male or female.
- 4.3 **Gender** - gender is distinct from biological sex and is socially constructed. It describes the identities (or 'gender norms') that society expects us to conform to, on the basis of our male or female biological sex. For example, the differences in how women and men are expected to behave, dress and interact.
- 4.4 **Gender identity** – gender identity describes the gender a person identifies as and feels themselves to be. This is an innate and deeply felt sense of self. For a majority of people, their biological sex and their gender identity are aligned, e.g. male biological sex and male gender identity. For some people, their gender identity differs from their biological sex. They may identify as the 'opposite' gender or have an identity on the gender spectrum other than male or female, (see below). The difference between someone's biological sex and their gender identity can be a source of significant psychological distress and is medically recognised as gender dysphoria.¹

Gender binary or gender spectrum?

Gender identity is often viewed in terms of a male/female binary, (i.e. you identify as one or the other). A binary approach, however, is not reflective of everyone's gender identity.

Gender can also be viewed as a *spectrum* of many identities, ranging from male to female and including non-binary identities such as genderfluid, genderqueer and agender. Identities on the spectrum may be fixed, or people may move up and down the spectrum over time.

Equally, some people reject the concept of gender labels and categorisation altogether, on the grounds that this perpetuates oppressive stereotypes and roles.

- 4.5 **Transgender** - anyone whose gender identity is different from their biological sex –which includes non-binary people - may identify as transgender, or the more recent term '**trans**'.
- 4.6 **Gender affirmation/confirmation process** - this describes the personal, social and sometimes medical process by which a transgender person seeks to live permanently as the gender they identify as.² For some trans people, this will mean permanently living as the gender they identify as without undergoing any medical procedures. For others it will be a longer transition process, requiring

¹ Having a matching sex and gender identity is sometimes referred to as cisgender or cis. Both cis and trans are Latin-derived, with cis meaning 'on this side of' and trans meaning 'on the other side of'.

² This process is sometimes referred to as 'gender reassignment treatment'.

first living as the gender they identify as (known as 'real life experience') for a significant period of time, before beginning hormonal and/or surgical procedures to change their physical appearance permanently.

4.7 Whilst a person's appearance may change considerably during a transition process, it is polite and respectful to acknowledge them as the gender they identify as from the start of the transition process. There is no set time period for a transition process to be 'completed' by however there is usually a date by which an individual socially transitions.³

5. Supporting staff through a gender transition process

5.1 Making the decision to transition is a very significant step in a person's life and not something they will have undertaken lightly. For most trans people, reaching this point will be the culmination of years of seeking to reconcile the person they are seen to be with the person they feel themselves to be. Feeling supported as they develop their new identity is key.

5.2 WMP is committed to supporting staff who are considering transitioning, are going through the process and those who have transitioned. Section 8 below sets out the process for letting us know you are going to transition. This includes the development of a transition Memorandum of Understanding to capture key transition points and to agree and record how issues such as updating records and informing others will be addressed.

5.3 Whilst an individual's specific needs will be reflected in their action plan Memorandum of Understanding, there are some general principles that should always be followed:

- Acknowledge a person as the gender they identify as from the outset of the transition process. This means, for example, using their chosen name and pronouns from the day they begin transitioning
- Respect people's boundaries. Transitioning is a very personal and individual experience. Some people may choose to talk openly about their transition, whilst others may choose to keep the experience private
- Respect a person's privacy. Do not tell others about a person's trans status or transition process unless you have permission to do so. If you do not have this permission and inform another of a person's trans status, you potentially will be breaking the law or breaching WMP's Code of Conduct (see section 2 above)
- If you are not sure how to address or refer to someone, politely ask them how they would like to be addressed, including which pronouns they would prefer to be used.

5.4 Staff undergoing gender confirmation treatment will have any absences discounted to eliminate potential discrimination.

³ Some trans people will apply for a Gender Recognition Certificate (GRC) to gain full legal recognition of their affirmed gender. However, it is important to note that applying for a GRC is not a legal requirement and is not necessarily the 'end goal' of a transition process. Not all trans people will apply for a GRC.

6. Supporting staff who are non-binary

- 6.1 As explained in the terminology section above, some people will have identities on the gender spectrum other than female and male. People with non-binary gender identities will not necessarily undergo a formal, permanent gender transition process, but may choose to express their gender identity by the way they present themselves, such as through their dress and appearance. It is polite and respectful to accept a person's gender identity as a legitimate expression of who they are, even if that identity is hard for you to relate to or understand.
- 6.2 WMP is supportive of different gender identities and is adapting its systems to recognise a wider range of gender identities and titles.

7. Use of facilities

- 7.1 People should be able to use gender-appropriate toilets. WMP welcomes trans staff and members of the community to use toilet facilities of their affirmed gender as soon as they start to live publicly in that gender. Requiring someone to use a toilet designated for disabled people is not acceptable and in fact illegal. WMP is committed to providing gender neutral as well as single sex and inclusive toilet, showering and changing facilities.
- 7.2 The use of toilets and changing facilities during transition may be discussed and agreed in advance, as part of the staff's transition Memorandum of Understanding.
- 7.3 We recognise that, even if a Memorandum of Understanding is in place, issues can sometimes arise over the use of single sex facilities when a person's physical presentation and gender identity differ. For example, users of a female-only changing room may raise concerns with staff about the presence of someone they perceive as male. If concerns are raised by other users about the presence of an individual in a single sex facility, WMP has a duty of care to all service users to investigate those concerns. This will be done in a sensitive manner with a view to ensuring the use and enjoyment of our facilities by all, however we will not tolerate any form of harassment or bullying of trans staff.

8. Name, gender identification and dress code

- 8.1 Someone who transitions may want to use a variant of their original name or an entirely different name. Once they notify WMP of their preferred name and title (e.g. Ms, Miss, Mrs, Mr, Mx) this name should be used in all circumstances, rather than their birth name and all relevant records should be updated immediately. This should include the reissuing of training records and certificates. See Appendix 2 for more information.
- 8.2 An individual may also prefer to use a particular pronoun: this might be 'he', 'she' or 'they' (used to refer to a single person). In non-binary communities, some individuals refer to themselves as 'zie' or 'ey', and the titles 'Mx' and 'Msc' are gaining popularity.

8.3 A process will need to be agreed for adhering to any dress code. Non-binary colleagues are encouraged to select whatever uniform they feel comfortable in, regardless of gender marker. The only requirement is that it is the correct uniform for their role.

9. The process to follow

Letting WMP know

9.1 Making the decision to transition and begin revealing your gender identity will impact on all areas of your life, including your work. As soon as you feel comfortable sharing this information, please let WMP know you will be transitioning by contacting your line manager, HR or the Diversity and Inclusion Team. Letting us know that you plan to transition will help us support you more effectively, and enable us to plan with you how this change is managed in the workplace. Information about your transition will be treated in confidence as sensitive personal information and will be limited to a strictly need to know basis with your consent.

Initial meeting

9.2 If you notify us that you intend to transition, a face-to-face meeting in a private space will be arranged. The purpose of this - and subsequent meetings - will be to discuss and identify what support you will need during your transition and to agree how the practicalities of your workplace transition process will be managed. The meetings will usually be with your line manager and a HR Advisor. You can also bring someone with you to the meeting for support if you wish to.

Agreeing a Memorandum of Understanding

9.3 The meeting attendees will want to gain an understanding of your planned transition process and any significant timelines, such as when you will socially transition at work to your affirmed gender, and also to discuss practicalities such as when and how your colleagues can be made aware of these changes. This is also an opportunity for you to raise any questions that you may have. WMP will seek to accommodate your needs, for example, if they want to stay in their current workplace or transfer at the start of transition, or after transition.

9.4 The outcome of these discussions should be captured in a Memorandum of Understanding. The purpose of this is to detail your workplace transition and when and how actions will be taken to reflect your new identity. An example of what it should address is included in appendix 1.

10. Confidentiality

10.1 Information about a person's gender identity will be treated as sensitive personal information under the Data Protection Act (1998). As part of the transition Memorandum of Understanding, it will be agreed with the member of staff with whom information on their status can be shared. All staff have a

responsibility not to disclose or discuss a person’s transg status with any third party, without explicit permission from that individual. As such behaviour will be considered to be harassment and will be dealt with according to WMP’s Disciplinary Procedure. Moreover, breaching the confidentiality of those who have already transitioned may potentially be a criminal act under the GRA in terms of disclosing ‘protected information’.

11. Complaints about Discrimination

11.1 If you or a member of your team feels like they have been discriminated against, bullied, harassed or victimised at work because of their gender identity or perceived gender identity, or their association with someone who is trans or perceived to be trans, this should be pursued through WMP’s Dignity at Work or Grievance Policies.

12. Clarification of Responsibilities of Staff and Managers

	Responsibility
Employee	Disclosure of intention to transition (past transition) is entirely at the discretion of the employee. It is for the employee to decide if they wish to create a transition plan and if so, to lead their own plan.
Line Manager	Provide full support. Observe confidentiality, and only with the consent of the employee to act as a point of contact in all matters, including informing colleagues and co-workers.
HR	Provide assistance and support as may be requested by the employee and their line manager.
Senior managers	Ensure all employees understand and adopt this policy.
All staff	Respect and support the transitioning person’s dignity and privacy.

13. Further information and resources

Within WMP:

WMP LGBT Network (The Network)

WMP Diversity and Inclusion Team

B-Well - WMP’s Employee Assistance Programme providing counselling and psychological support to all staff.

National organisations:

The Beaumont Society is a support network for the trans community – <http://www.beaumontsociety.org.uk/>

Broken Rainbows is a national organisation offering support to lesbian, gay, bisexual and trans victims and survivors of domestic abuse – <http://broken-rainbow.org.uk/>

Depend is an organisation offering free non-judgmental advice and support to family and friends of trans people in the UK – <http://www.depend.org.uk>

The Gender Trust is a support and information centre for trans people and the families. It also provides advice to employers and others who encounter gender reassignment in their work – <http://gendertrust.org.uk>

The Gender Identity Research and Education Society (GIRES) initiates and promotes research into gender identity – <http://www.gires.org.uk>

Mermaids is a support group for gender variant children, teenagers and their families – <http://www.mermaidsuk.org.uk>

Stonewall is a well known and influential LGBT charity - <http://www.stonewall.org.uk/>

Gendered Intelligence is an educational resource - <http://genderedintelligence.co.uk/>

Trans Media Watch gives guidance to trans people when dealing with the media – <http://www.transmediawatch.org/>

The UK Intersex Association (UKIA) campaigns for and supports intersex people – <http://www.ukia.co.uk>

Appendix 1 - Developing a Memorandum of Understanding for supporting staff transition

Below are examples of what should be discussed and detailed in a staff member's transition Memorandum of Understanding. These are not intended to be exhaustive examples and can be added to in order to reflect the staff member's role and circumstances. Any actions should have a named person responsible for them and a timeline for completion as appropriate.

The Memorandum of Understanding should be treated as a confidential document and agreement reached with the staff member as to where it will be stored and who it will be shared with.

Key issues:

1. What is the likely timetable for the transition and any key dates? In particular, when will the member of staff begin their social transition at work (their workplace transition date)?
2. What gender, name, title and pronoun does the staff member want to be known by from their workplace transition date onwards?
3. Consider what information needs to be updated by the workplace transition date to reflect the staff member's identity? Who will be responsible for arranging these changes? For example:
 - a) Staff records (held by HR)
 - b) Email and telephone systems
 - c) WMP I.D. and Warrant cards*
 - d) Staff contact lists
 - e) Office door names
 - f) Intranet and internet references to the staff member*
 - g) Any information provided to staff
 - h) Membership lists of groups and committees
 - i) DNA and fingerprint records

* Where this includes photos of the member of staff, these may need to be updated at a later stage and/or on more than one occasion as the person's appearance changes. (The previous policy has a more comprehensive list of records that need amending. Could this be transferred across to minimise the risk of a record being missed?)

4. Who needs to be made aware of the transition, to ensure the staff member is addressed and treated according to their affirmed gender? For example:
 - Team members
 - Wider department
 - Regular email and telephone contacts
 - Staff who will implement the changes noted in this document

Does the staff member give their permission for information to be shared with these people?

5. How would the staff member like the above people to be made aware of their gender?

For example, this could simply be a short email from the member of staff (or their line manager) stating that from date x they will be attending work according to their affirmed gender and will be known as [preferred name], or the staff member could draft a more personal message. Other options could include speaking directly to individuals, holding a team meeting or a mix of all of these.

The staff member might also want to consider this as an opportunity to set expectations/boundaries with individuals about what they are comfortable discussing, or how they would like to deal with any questions other people may have. It can also be an opportunity for the line manager to educate people about transgender issues, for example by circulating this guidance document.

6. What arrangements are in place at the staff member's place of work in terms of single gender (i.e. male or female) and gender neutral toilet and changing facilities?

7. Are there dates for appointments relating to the transition process, or will time off for procedures be needed? These will be treated and recorded as per the usual process for specialist medical appointments. If time off for procedures is needed, this will be recorded as sickness absence on GRS but will be discounted under any absence management considerations. Will any temporary adjustments be needed on their return to work from any procedures, such as reducing hours/phased return? Will the person be taking any medication that may affect their performance?

8. Are there any other issues that the staff member would like to discuss?

A copy of the Memorandum of Understanding should be circulated on a confidential basis to the member of staff and the other people present at the meeting for review and correction as appropriate. The member of staff must give their written agreement to the final version of the Memorandum of Understanding for it to be implemented.

The group should come to an agreement as to future meetings, how to maintain contact with each other outside of those meetings (e.g. emails marked as confidential), ensuring that the Memorandum of Understanding is implemented on time and that the staff member has an appropriate support system in place should any issues arise during the course of their transition.