

Gender Identity and Expression

Employment Policy

October 2017 (version 1.0)



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Gender Identity and Expression Employment Policy

Our commitment to equality

The Health and Social Care Board (HSCB) recognises that staff who are able to be themselves in work are more likely to enjoy going to work, feel included and can achieve their full potential. As an inclusive organisation and a leader in diversity, the HSCB is committed to the health, well-being and dignity of all our staff, regardless of their gender identity and expression. The HSCB strives, through this policy and guidance and other relevant workplace policies (including our Equality of Opportunity Policy, Working Well Together Policy, and our Bullying and Harassment Policy), to create an environment where all our employees are engaged, happy and productive.

In the context of this policy,

- ❖ we describe a range and diversity of gender identity and expression in terms of a 'spectrum' or a continuum between male and female.
- ❖ We use the term 'transgender' to denote those who intend to transition, are transitioning or have transitioned. Medical processes are not essential to transitioning. Some people choose not to, or cannot, undergo a medical process but are still transgender.
- ❖ We refer to 'non-binary' people as those whose gender identity falls outside the gender binary of male or female. This includes individuals whose gender identity is neither exclusively male nor female, a combination of male and female or between or beyond genders.

We recognise that individuals describe their gender identity in different ways and that the use of some terms is contested¹. For definitions of all key terms that we use in this policy see our 'Glossary'. We will keep our use of terms under review as the terminology continues to evolve.

We recognise that identity and expression are distinct from one another. Any gender identity may express itself in a variety of ways.

¹ See also House of Commons' Women and Equalities Committee (Dec 2015) *Transgender Equality*. London: The Stationery Office.

Good quality statistical data in relation to gender identity in the UK does not exist. In its recent report, the House of Commons Women and Equalities Committee reported that “Current estimates indicate that some 650,000 people are “likely to be gender incongruent to some degree” (p.6).

The purpose of this policy is to provide guidance and advice to staff and managers on the recruitment and retention of transgender and non-binary staff.

We remain fully committed to promoting equality of opportunity, in line with Section 75 of the Northern Ireland Act 1998, as well as our other legal obligations (including under the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999, the Gender Recognition Act 2004, Data Protection Act 1998, the Human Rights Act 1998 and our obligations as a service provider under the Sex Discrimination (Amendment of Legislation) Regulations 2008).

In cognisance of their multiple identities, transgender and non-binary people will of course likewise be protected under any anti-discrimination legislation that relates to other aspects of their identity, such as their sexual orientation or disability status.

Transgender and non-binary individuals frequently face discrimination, prejudice and the stigma associated with their difference. Social isolation, breakdown in family relationships and depression often results.

We believe that there are a number of benefits for both our organisation and transgender and non-binary individuals in having a policy in place:



Aims and objectives of the policy

The policy is aimed at creating a workplace where;

- ✓ the dignity of and respect for transgender and non-binary people is protected and promoted
- ✓ transgender and non-binary people feel safe
- ✓ transgender and non-binary people feel comfortable to express their gender identity
- ✓ transgender and non-binary people can fulfil their full potential and fully contribute to the workplace
- ✓ all staff (including line managers and managers more generally) better understand the needs of transgender and non-binary staff and are empowered to support and strive to meet their needs
- ✓ discrimination and harassment against transgender and non-binary people (whether by staff or third parties the HSCB interacts with) is not tolerated and any allegations thereof are dealt with in an effective manner.

Recruitment and selection

In line with our organisation's equality of opportunity and other employment policies, the HSCB strives to become an employer of choice for all.

All staff involved in recruitment and selection processes whether in an administrative role or other will be trained on the appropriate handling of information records of transgender applicants (see also section on 'Handling Information Records'). Staff will be made aware that documents may be received under the previous name and title of an individual who transitions.

We will ensure that – similar to other equality information – recruitment and selection panels do not receive any information on the gender identity or status of transgender applicants.

Very occasionally there may be a genuine occupational requirement (GOR) for a post to be carried out by a particular gender. This will be stated in the advertisement of the post. Further guidance on the appropriate application of a GOR can be provided by your Human Resources Department and or Equality Unit.

In such cases, applicants who intend to or are in the process of transitioning must disclose their status to the panel. Individuals who have obtained a new birth certificate based on a Gender Recognition Certificate are not required to disclose their status and must be treated as their correct gender.

Staff must never ask for a Gender Recognition Certificate. It is illegal to do so. Further details relevant to recruitment and selection staff can be found in the sections on 'Access NI' and 'Handling Information Records'.

Supporting staff who identify as transgender and non-binary

The HSCB will support all transgender and non-binary staff by providing them with access to information resources (including websites and dedicated resources) and access to support and advice (including human resources, occupational health, trade unions and counselling).

We will also signpost staff to dedicated community and voluntary sector organisations should they wish to access support and advice through these means. Appendix 1 provides further details.

The HSCB supports the Lesbian, Gay, Bisexual and Transgender (LGB&T) Health and Social Care (HSC) staff forum. We will provide information to transgender and non-binary staff on how to access the forum and to all staff to make them aware that this support is available to them and their colleagues to create opportunities for shared understanding (see Appendix 1).

The HSCB will also support the right of all transgender and non-binary staff to dress (including wearing makeup) in line with the expression of the gender they identify with, while adhering to any local uniform and dress arrangements.

The needs of transgender and non-binary staff will differ from one individual to the next. Staff who are intending to transition or are transitioning will have particular support needs linked to the transition process. Likewise, particular needs may arise for those who have transitioned. These matters will be addressed in consultation with the transgender employee, Human Resources and the direct Line Manager and are detailed in our associated procedure. We will likewise seek to support staff who identify as non-binary should particular needs arise.

We also recognise that staff who are family or carers of a person who identifies as transgender or non-binary may have particular welfare needs.

Roles and responsibilities

Director of Human Resources

- responsible for ensuring that the organisation promotes equality of opportunity for all staff and applicants in its employment policies and practices

Human Resources Staff

- monitor the implementation and operation of this policy
- ensure that a systematic assessment of training and awareness needs is carried out in relation to gender identity issues
- ensure that appropriate training and awareness initiatives are delivered
- ensure that appropriate support arrangements for transgender and non-binary individuals are in place
- in handling records and dealing with matters relating to transgender individuals ensure that they adhere to the provisions under the Data Protection Act and the Gender Recognition Act at all times
- support any staff intending to transition throughout the transition process and beyond by working with the individual and the line manager
- consider signposting individuals to the HSC Lesbian, Gay, Bisexual and Transgender staff forum for general information and support
- effectively advise on investigations into any alleged incidents of inappropriate behaviour by another member of staff towards transgender and non-binary individuals and take effective action in accordance with the outcome of the investigation

Line Managers

- participate in training and awareness initiatives as required
- ensure that their staff participate in training and awareness measures as required
- support any transgender and non-binary member of staff and seek to meet their needs
- consider signposting individuals to the HSC Lesbian, Gay, Bisexual and Transgender staff forum for general information and support
- at all times ensure that they have the consent of the transgender or non-binary member of staff before they disclose any information relating to their gender identity to another person
- may avail of support from Human Resources or the equality team in relation to gender identity issues generally
- once a member of staff has advised that they intend to transition enquire whether the individual wishes the line manager to liaise with Human Resources in order to arrange a joint meeting
- support any of their staff intending to transition throughout the transition process and beyond
- ensure that all staff are aware of appropriate behaviour in relation to gender identity
- if a transgender or non-binary member of staff advises them of an incident of alleged inappropriate behaviour – whether by another member of staff or a third party – to liaise with Human Resources, in line with relevant policies and procedures, to initiate an investigation and take effective action in accordance with the outcome of the investigation
- being mindful of the needs of staff who are family or carers of a person who identifies as transgender or non-binary.

Staff who identify as transgender or non-binary

- We encourage members of staff who identify as transgender or non-binary to avail of all the organisation's support mechanisms and to;
- notify their line manager – or their manager's manager or the HR nominated officer – of any incident of alleged inappropriate behaviour
- advise their line manager or Human Resources at the appropriate time should they wish to avail of support in the workplace
- be aware of support provided by trade union representatives
- those staff who have decided to transition to advise their line manager at the appropriate time
- constructively engage with Line Manager and Human Resources to agree appropriate support measures.

All Staff

- familiarise themselves with and follow this policy and procedure
- participate in training and awareness initiatives as required
- adhere to the Working Well Together Policy and the Harassment Policy and Procedure and other relevant employee relations policies at all times
- be mindful of the needs of staff who are family or carers of a person who identifies as transgender or non-binary.

Review

The legal rights and good practice standards relating to transgender and non-binary people are constantly evolving so this policy will be reviewed annually.

In order to assess the operational effectiveness of this Policy a review will be undertaken at regular intervals and not later than three years following implementation. The HSCB has consulted with individuals who identify as transgender and non-binary, external and internal groups and Trade Unions in the development of this Policy.

Equality and Human Rights

Our organisation is committed to the promotion of equality and human rights. The intent of this policy is to promote equality of opportunity for staff who identify as transgender or non-binary and those interested in becoming our staff. We have considered the diversity within this group of staff. This is documented in the screening template for this policy.

The HSCB will continue to ensure that we fulfil our Section 75 equality duties by continuing to explore the impact of our policy as it is implemented. Screening outcomes are published as part of our regular screening outcomes reports.

Breaches of this Policy

Breaches of the policy may be dealt with under the disciplinary procedures, such as breaches of confidentiality.

Acts of discrimination, victimisation or harassment perpetrated by an employee of the HSCB against any other employees may result in disciplinary action up to and including dismissal.

Gender Identity and Expression Employment Policy

Guidance and Procedure

Supporting staff who are undergoing gender reassignment or who have undergone gender reassignment

When a member of staff makes us aware that they intend to undergo gender reassignment, the line manager and the Human Resources Department will work together with the individual to agree how the organisation can best support her or him during the various phases of the transitioning process.

Likewise, when a new member of staff decides voluntarily to make us aware that they have transitioned in the past, an offer will be made to meet to discuss any issues they may wish to explore, should they wish..

This Agreement will be formalised in a Memorandum of Understanding (see sample in Appendix 2) and will be signed by the employer and the individual. It will be led by the individual and specify the agreement reached. It may include:

- the disclosure of information (what, who, when, where – staff and clients if relevant)
- training for colleagues (this may include face-to-face training if necessary)
- provide information and signpost to any other support measures
- practical concerns (clothing, toilet and changing facilities) if relevant
- the management of absence from work required for assessments and treatments in relation to the transitioning process if relevant and
- the amendments to records (when, what, who) and the handling of historic information.

It will likewise cover any review of the arrangements. The number and frequency of reviews will be led by the individual.

This Memorandum of Understanding (MoU) will be confidential to the employer and the individual and those individuals required to be informed, as agreed by and detailed in the MoU.

Training and Awareness

The HSCB will provide access to appropriate training and awareness materials on transgender and non-binary issues to relevant staff. This will include access to eLearning programmes such as the PHA's LGB&T Creating Inclusive Workplaces eLearning, which can be accessed via internet <http://www.lgbtelearning.hscni.net/> and via the intranet <http://lgbtelearning.hscni.net/>.

Issues relating to equality for transgender and non-binary people will be mainstreamed in other relevant training delivered to our staff, including, for example, mandatory equality training and recruitment and selection training.

Working Arrangements and Absence Management

The HSCB recognises that the transitioning process may involve a series of appointments, treatments and, in some cases, surgery for the individual. Some of these may necessitate periods of absence from work. While often the series of appointments and treatment is time limited, they can be regular and reoccurring. This provides a challenge for people transitioning as attendance at some appointments is gauged as a reflection of their commitment to the transition process.

The organisation has in place a range of policies and procedures which may assist staff in the transitioning process. This includes sickness leave, flexi leave, special leave, annual leave and other types of leave as well as work-life balance policies, such as part-time working; compressed hours, personalised hours; employment breaks. The line manager should seek advice and closely work together with Human Resources (and Occupational Health) and the individual to agree the type of leave that is appropriate and how it might be recorded given the sensitivity involved. Line Managers should seek appropriate advice from Human Resources (and Occupational Health), including on any associated long term health, disability or reasonable adjustment issues. At all times communication between the employee, the Line Manager and Human Resources (and Occupational Health) will be central to managing absence.

The organisation recognises that non-binary people may also have needs relating to working arrangements and absence management and similar types of arrangements may apply.

Handling Information Records

Data relating to gender identity may be regarded as highly sensitive by transgender people. The HSCB recognises the importance of procedures to ensure that all processing of personal data relating to transgender and non-binary staff is conducted strictly in line with the provisions under the Data Protection Act 1998 and our Information Governance Policy. We also recognise that privacy about an individual's gender identity background may be a human rights issue (Article 8 of the Human Rights Act which is the Right to Respect for Private and Family life). The Gender Recognition Act 2004 in the UK already safeguards the privacy of transgender people by defining much information in relation to the Gender Recognition process as 'protected information'. Anyone who acquires that information 'in an official capacity' (including as an employer) would be in breach of the legislation if they disclosed it without the individual's consent unless required to do so in limited circumstances such as a police investigation of a crime. Unjustified disclosure may be a criminal offence. This applies to all staff including those involved in handling records and colleagues of transgender staff.

In relation to staff who are transitioning or who have transitioned during their employment with the organisation in the past, records will be updated and new documents will be recorded to reflect the correct gender alongside the original documents which may be required for employment, Pension or insurance purposes.

Access to all documentation will be restricted to employees who require the information to complete their job.

Pensions

Pension entitlements are based on a person's legal gender. Once a Birth Certificate in the person's new gender is received by HSC Pension Service the member record will be amended to reflect the member's legal gender. Historic pension events cannot be changed but all future benefits will be calculated to reflect the acquired gender entitlements.

An individual who was married and who has undergone gender reassignment is obliged to divorce from their partner, given that in Northern Ireland same sex marriages are not recognised. Arrangements for Nominated Partners pensions allow for a partners pension as long as the couple can still fulfil certain conditions. Further details on the Partner nomination are available in the Guide for Pensioners and Dependents and on the HSC Pensions website (see Appendix 1).

A death gratuity may be payable when a member dies in service and may also be payable if a member dies within 5 years of retirement. Members can nominate a person to receive this benefit by completing a Death Benefit Nomination Form. Further information is available on the HSC Pensions website.

Background Checks (Access NI)

AccessNI operates a special application process for transgender people to assist in ensuring discretion to those who do not wish their previous gender (and names) to be disclosed to the person or organisation requesting the Disclosure.

The individual will be required by AccessNI to provide details of their previous name(s) under separate cover to AccessNI. There is no need to disclose transgender status (especially on application forms) to an employer or other organisation who has requested that a Disclosure is carried out unless you are content for anyone to know these facts.

AccessNI carries out Disclosures based on current and previous names and the process requires that all applicants provide these for checking purposes. This is intended to take account of names changed through marriage or by legal name changes. Full details on the process can be accessed from their website.

References for former employees

When line managers receive reference requests for any of their former employees who have since undergone gender reassignment care will be taken to use the name and title as indicated in the correspondence requesting the reference. Line managers will not at any stage reveal information that could identify the individual as having transitioned.

Additional Support

The HSCB will provide assistance to all line managers who wish to draw on additional support from Human Resources and equality teams as appropriate.

Anti-Bullying and Harassment policies

We will review our anti bullying and harassment policies in the light of this policy and ensure that the inclusion of these issues in the policy is promoted widely across the organisation.

Gender Identity and Expression Employment Policy

Glossary

The language used in the context of gender identity and expression is diverse. There is no universal agreement on definitions of terms, neither – first and foremost – amongst individuals themselves, nor amongst groups within the sector, nor amongst researchers. Below, we seek to define the terms we use in this policy. We recognise that the use of language is at times controversial. We do not intend to offend nor challenge the self-identification of individuals in any way.

Gender Identity

How a person feels who they are – male, female, or some other gender. This may or may not correspond to the sex they were assigned at birth.

Gender Expression

The external manifestation of a person's gender identity. Gender can be expressed through mannerisms, grooming, physical characteristics, social interactions and speech patterns. (see Transgender Equality Network Ireland TENI)

Gender Identity and Expression Spectrum

The continuum, range and diversity of gender identity and expression between male and female.

Transgender person

Someone who intends to transition.

Transition

A process through which some transgender people begin to live as the gender with which they identify, rather than the one assigned at birth. Transition might include social, physical or legal changes such as disclosing to family, friends, co-workers and others; changing one's appearance; changing one's name, pronoun and sex designation on legal documents (e.g. driving licence or passport); and medical intervention (e.g. through hormones or surgery).

Non-binary person

An umbrella term for a person with a gender identity that falls outside the gender binary of male or female. This includes individuals whose gender identity is neither exclusively male nor female, a combination of male and female or between or beyond genders. People under the non-binary umbrella may describe themselves using one or more of a wide variety of terms. (see Transgender Equality Network Ireland TENI).

Intersex person

Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations. In some cases, intersex traits are visible at birth while in others, they are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all.

According to experts, between 0.05% and 1.7% of the population is born with intersex traits (...).

Being intersex relates to biological sex characteristics, and is distinct from a person's sexual orientation or gender identity. An intersex person may be straight, gay, lesbian, bisexual or asexual, and may identify as female, male, both or neither.”

UN High Commissioner's fact sheet on Intersex Conditions Sept 2015
http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/UNFE_FactSheet_Intersex_EN.pdf

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Appendix 1: Contacts and Resources

Human Resources

[add contact for organisation's dedicated gender identity contact within Human Resources]

Occupational Health

The main role of the Occupational Health Service (OHS) is to provide advice to employees, managers and the employer on issues relating to health at work and fitness for work. The service is confidential, advisory and impartial.

The OH office is situated on the 6th Floor, 2 Franklin Street, Belfast BT2 8DQ. Tel: 028 9536 3857

Appointments (including Self Referral) are booked via the HR department. Contact HR on: 028 9536 3955

Counselling

Inspire workplaces – For free, confidential and immediate support call 0808 800 0002

Lesbian, Gay, Bisexual and Transgender (LGB&T) Health and Social Care (HSC) staff forum

Email: lgbtstaff@hscni.net

All correspondence will be treated completely confidentially.

Website: www.lgbtstaff.hscni.net

Trade Unions

Many trade unions likewise have dedicated fora on gender identity or combined fora on gender identity and sexual orientation issues. In addition, many have identified dedicated contact persons for gender identity matters.

HSC Pensions

Telephone: 028 71 319 111

Email: hscpensions@hscni.net

Website: www.hscpensions.hscni.net

Websites

www.gires.org.uk

(Gender Identity Research and Education Society)

This website combines the expertise of both transgender and non-transgender individuals. Their collective aim is to ensure that legislation and practices meet people's needs. The site contains a list of other useful websites on this subject. <http://www.gires.org.uk/websites.php>

www.teni.ie

(Transgender Equality Network Ireland)

Transgender Equality Network Ireland (TENI) seeks to improve conditions and advance the rights and equality of trans people and their families.

eLearning

'Creating inclusive workplaces for Lesbian, Gay, Bisexual and Transgender people'

Intranet: <http://lgbtelearning.hscni.net/>

Internet: <http://www.lgbtelearning.hscni.net/>

Material Resources

Signpost to Support Networks in the Community

<http://www.hscbusiness.hscni.net/services/1801.htm>

HM Revenue and Customs: Taxes and Benefits - Information for our lesbian, gay, bisexual and transgender customers.

<http://www.hmrc.gov.uk/leaflets/Pride1.pdf>

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Appendix 2: Memorandum of Understanding Template

CONFIDENTIAL

This agreement does not represent a binding and unchangeable agreement, but rather a commitment to engage with and support (insert name) at all stages.

- **Agreement review period (if required):**
(agree timescale – the number and frequency of reviews is to be led by the preferences of the individual)

- **Current post.**
(Highlight what was agreed with employee)

- **Health and Safety (medical, heavy lifting etc)**
(As per any other medical absence, recovery and return to work as per medical guidance. - Agree any changes)

- **The expected point or phase of change of name, title, personal details and social gender.**
(Insert date)

- **Informing Colleagues, (insert name) agrees to whom, when, where and depth of disclosure.**
(Dates, and agreement of disclosure)

- **Information/Awareness/Support**
(Awareness information detailed, Dates of any training or awareness meetings for staff agreed)

- **Amendments to documentation, records and systems**

(Discuss all amendments (personal files, ER case files, payroll, any other paper or electronic files and databases; also ID passes, email address, staff lists, organisational charts, door signs, website references; also line manager has to agree with transgender staff what records he/she will keep)

- **Pensions**

(Discuss changes to pension as required)

- **Practical concerns**

- Clothing provision - Dress policy for relevant gender
- Cosmetic Make-up – work policy
- Single sex toilet facilities - A common issue raised by staff is the use of toilet facilities. While every effort should be made to deal with concerns amongst staff it should be made clear that once (insert name) begins the process of changing gender identity they will use the appropriate facilities of their new gender.

(It is not acceptable to insist that a transgender person use the facilities of the sex assigned to them at birth or the accessible / disabled toilet. This could amount to unlawful discrimination.)

- Showers/ Changing facilities/Sleeping accommodation/Lockers etc – (Shared use of these facilities to be agreed in discussion with (insert name) and colleagues to ensure that everyone is comfortable with the arrangements and the dignity of all concerned is taken into consideration.)

- **Absence from work**

The extent of any medical treatment or surgical procedures is unique to each individual.

Subject to the needs of the service, flexibility should be given to (insert name) who may need to take leave or rearrange working hours in order to attend additional appointments outside of work.

Agreed Action Plan

What	Who	When

SIGNED

NAME

DATE

SIGNED

NAME

DATE

SIGNED

NAME

DATE

Version Control

	What changes and Name of author
Version 1.0	Anne Basten, Equality Manager