

Stronger Together

Guidance for women's services on the inclusion of transgender women

Second edition (2015)

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Whilst we tried to ensure that a wide range of individual and service opinions about this guidance were sought prior to its release, we recognise that improvements can always be made. We would therefore be grateful to receive any comments or suggestions for the development of this guidance. Comments, suggestions, or questions should be directed to the LGBT Domestic Abuse Project.



Introduction



This guidance has been developed through partnership working between the LGBT Domestic Abuse Project, Scottish Women's Aid, the Tayside Violence Against Women Training Consortium and the Scottish Transgender Alliance. The LGBT Domestic Abuse Project is funded by the Scottish Government to raise awareness and improve service responses to lesbian, gay, bisexual and transgender people who experience domestic abuse.



The project aims to ensure that LGBT people who experience gender based violence will receive a positive service wherever they access support. It is managed by LGBT Youth Scotland and focuses on the experiences of people of all ages.

The original guidance document was published in 2011 and was drafted by LGBT Youth Scotland and the Tayside Violence Against Women Training Consortium. This second edition was redrafted by LGBT Youth Scotland and the Scottish Transgender Alliance in 2014-15.

Research looking specifically at transgender people's experiences of domestic abuse has found not only high levels of abuse experienced by trans people, but also a fear that services would be unwilling or unable to support them. We hope that this guidance allows organisations to develop their service to ensure that transgender people receive the service that they need and deserve.

The first edition (2011) of this guidance was borne of the wish to develop and improve our own capacity, and that of the services with whom we work, to provide a respectful, affirming and knowledgeable response to all women experiencing abuse within intimate relationships.

As we publish this second edition (2015), we are delighted by the extensive progress over the last few years and the ongoing commitment across the Scottish women's sector to improving inclusion of trans women.

The guidance has been prepared to go along with training, however we hope that it is still useful as a standalone document. The document is split into two sections:

- 1. Guidance on working with transgender service users**
- 2. Guidance on employment of transgender staff**

Whilst much of the guidance included in this document can be applied to the inclusion of all transgender people, the guidance predominantly relates to trans women with the protected characteristic of gender reassignment because those are the trans people which the Equality Act 2010 requires women only services to be inclusive of. Women only services are not legally required to be inclusive of trans people who do not identify as women (such as trans men, cross-dressing people and non-binary people). We urge practitioners and services, however, to recognise the current lack of domestic abuse services for these other transgender identities and to give careful thought to becoming inclusive of a wider range of transgender people.




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What do we mean by transgender?



This section explains who we are talking about when we use the term 'transgender people', or 'trans people'. You may be unfamiliar with some of the words and expressions that we use throughout this guidance. We have provided a glossary of the words at the back of the booklet, but we also try to explain what we mean as clearly as possible when we use each term throughout the guidance.




One difficulty that we sometimes have in understanding people's gender identity is that we can get caught up in thinking about our bodies as representative of our gender. Whilst we can use our bodies to express our gender identity, by using certain mannerisms, or by dressing a particular way, our body will not necessarily clearly represent our personal **gender identity** (the gender with which we internally identify). Sometimes people try to understand and identify other people's gender by their appearance, or how they present to others (**gender expression**). It is important to separate identity, which is about an internal sense of self, from our external appearance when thinking about gender. Throughout this booklet, we will talk about people's gender identity, which may or may not 'match up' with that person's external body appearance.

Another challenge that we can have is that we can get tied up by thinking about gender as something that is **binary** – that there are only two very separate possibilities, either men or women and that everyone must identify solely as one of these two genders at all times.

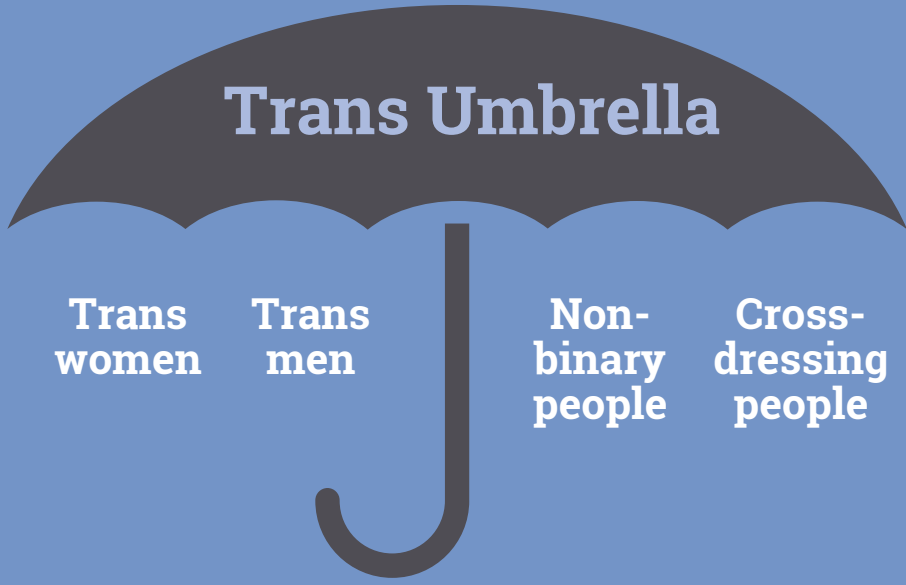
This does not represent how some trans people feel about their own gender identity. Some may identify as both of these genders, others may identify as neither. Such people often describe their gender identity as being **non-binary** but there are also other similar terms which people may identify with such as genderqueer, third-gender, gender-fluid or non-gendered. It is probably more helpful to think in terms of a spectrum of gender identities, rather than a number of pre-defined options.

For some of us, our gender identity might feel fixed and unchanging. Some of us might feel that our gender identity is not so rigidly fixed, but changes across our lifespan. Some of us might give very little, or no, thought to our own gender identity. On the whole, not thinking about one's gender identity is a privilege available only to non-trans people, whose gender identity is not often challenged or stigmatised by society.

It is important to separate identity, which is about an internal sense of self, from our external appearance when thinking about gender.



In Scotland, the term **transgender**, or **trans**, is often used as an 'umbrella' term to cover the many ways in which people might refer to gender identities which differ from those assumed and expected by society (see diagram). We also recognise that how people identify may change at different times in their lives and in different circumstances.



Trans Umbrella

Trans women

Trans men

Non-binary people

Cross-dressing people

The journey of acquired gender and transitioning

To help practitioners with less transgender knowledge or experience to understand what journey a transsexual woman (trans woman) may make, it might be useful to think of the decisions that she may make with respect to the expression of her gender identity.

A trans woman may have identified quite early in life that she felt as if her gender identity did not match with either her sexed body, or with the gender expectations that others had of her. Conversely, she may have identified this feeling rather later. Some people do not hear the word 'transgender' until they are into adulthood, and at that point may or may not identify with that term.

Some people will wish to begin living fully as the gender with which they identify (this process is known as gender reassignment or transitioning). Others may not feel safe or supported enough to do this. Transitioning can present a range of difficulties for people as it involves revealing one's gender identity to everyone in daily life, including employers, colleagues and family.

This carries significant risk of rejection, abuse, harassment and discrimination. Fear of experiencing such negative reactions can be one very strong reason that some people feel that they cannot transition in all aspects of their life.

If she feels safe enough, a trans woman starts living as a woman in some or all areas of her life and using female pronouns. She may change aspects of her gender expression. She may begin wearing make-up and feminine clothing. Just like all other women, trans women can have diverse gender expressions encompassing various feminine, androgynous or masculine aspects. Once she is living as a woman in all areas of her life, she will seek to change the name and gender on documents such as her bank cards, payslips, benefit letters, medical records, driving licence and passport. This can be a slow, expensive and confusing process so she may not manage to change all her documents.





Many trans women use hormone therapy to alter their bodies to better reflect their gender identity. Others may also undergo various surgeries so that their bodies more closely align with their gender identity. Whether or not to access hormones or surgery is a very complex and individual decision which is private, just like any other personal medical information. It is vital that service providers respect and recognise an individual's gender identity by using appropriate pronouns and treating people according to the gender in which they live. This should be the case regardless of what steps a trans woman has taken to assist her in living as a woman.

If someone has a female gender identity but has not yet started living as a woman or if they have a non-binary gender identity and live as neither a man nor a woman, thought may have to be given to how they can be provided with a service appropriate to their needs. This may mean, for example, that while shared hostel accommodation may not be appropriate, they can access individual accommodation or other non-residential services.

Once a trans person has lived full-time for two years as the gender with which they identify, they may apply for a Gender Recognition Certificate (GRC) to ensure that they are treated as that gender in law for all purposes and to enable them to have greater privacy protection (including receiving a new birth certificate with the gender corrected). People can receive full gender recognition certificates without needing to take hormones or undergo surgery.

It is worth thinking about transition not as an absolute, but as a process. The end point of that process for an individual may be about being accepted as their gender in daily life, may be acquiring a GRC, may be having surgery, or some other point. It is up to the individual to determine when their gender reassignment process is finished. As a service provider, it is not necessary to know the exact details of someone's gender reassignment process. It is only necessary to know whether they are living as their identified gender.

Once a trans person has lived full-time for two years as the gender with which they identify, they may apply for a Gender Recognition Certificate.



The range of experiences and possible needs of individual trans people makes it difficult to offer a guidance booklet which would cover every person's experience. The examples here should be seen as a way to understand some of the many trans experiences. We encourage you to think of gender as a broad spectrum of identities and expressions and to think about how to ensure that trans people and their identities are respected in your service.

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Including trans men and non-binary people in your services

Many of the services available for people who experience gender based violence (GBV) in Scotland are for women only. This means that for many trans people, including trans men, and people whose gender identity does not fit into binary ideas of 'male' or 'female', there are not safe and appropriate services available, despite the high levels of GBV that transgender people experience.

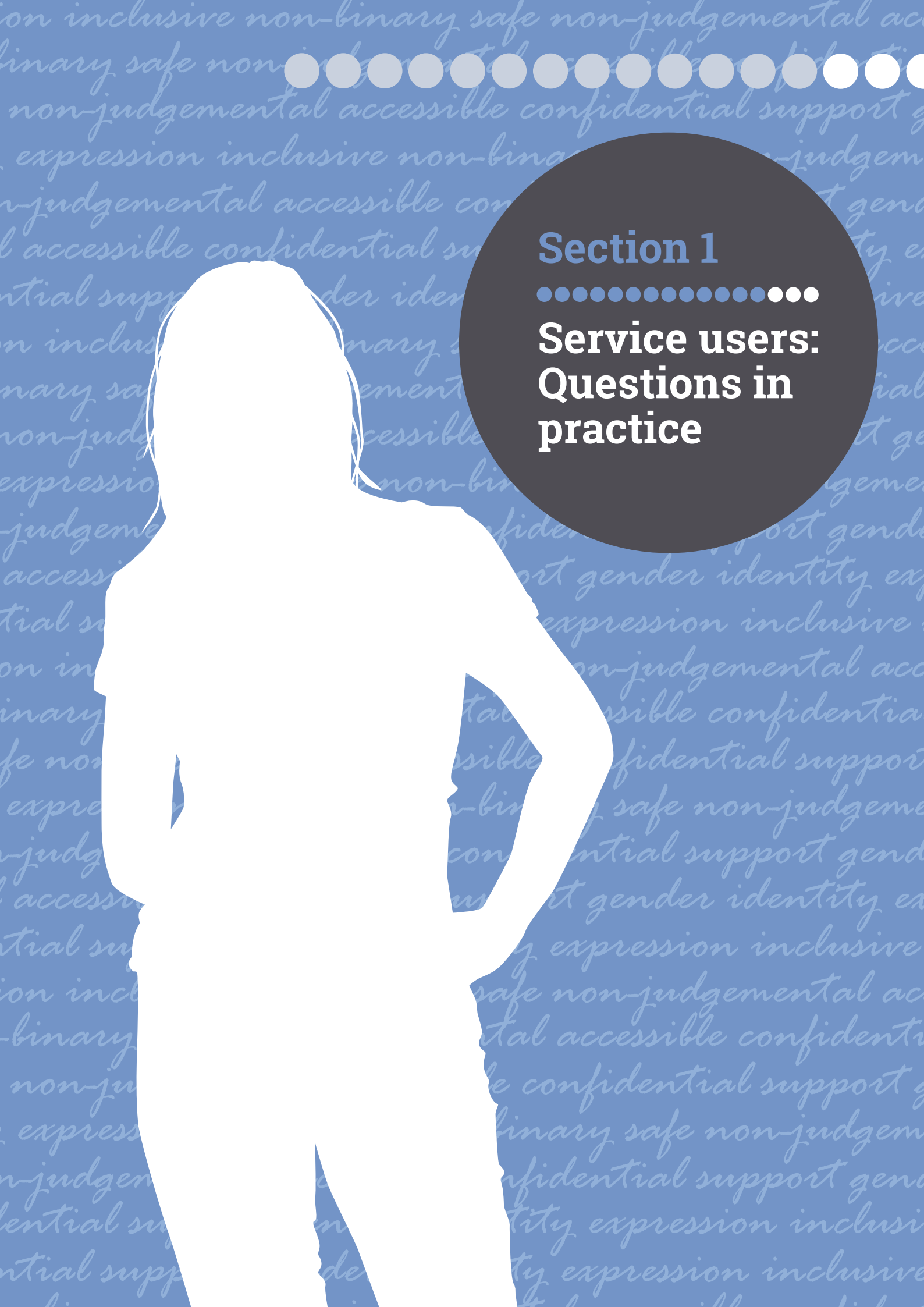
Trans men and some non-binary people may feel uncomfortable accessing a women-only service because it could be undermining of their gender identity. Non-binary people and some trans men could feel uncomfortable accessing general services. In the absence of more specific provision, some trans men and non-binary people experiencing sexual assault or domestic abuse may feel that a women's service is the safest, or only, place to seek support.

We would strongly encourage women's services to look at the ways that they could include all transgender people within their services.



Since non-binary people do not identify as men, it can be easier to include them than it is to include trans men within women's services. In light of this we would strongly encourage women's services to look at the ways that they could include all transgender people within their services to ensure that all transgender people who experience GBV get the support that they need and deserve. Services would need to ensure that the reason for this provision is made clear within their policies and that staff are clear about why this policy is in place.

Provision of service to trans men by women's services is, quite rightly, a matter for further discussion. Whilst this is beyond the scope of this guidance, we note that Edinburgh Rape Crisis Centre (formerly Edinburgh Women's Rape and Sexual Abuse Centre) developed a model of service provision which strives to support the unmet needs of all transgender people, and boys and men ages 12-18.



Section 1

Service users: Questions in practice



We've got a long way to go towards being inclusive of all women. In Violence Against Women services we spend lots of time promoting to outside services about how they should be non-judgemental about women in respect of their domestic abuse, but we can be really bad at making our own judgements in relation to other aspects of women's lives."

Senior worker, Dundee



We know that coming to Violence Against Women services must be scary, and the last thing we want is to do something that makes things worse for women. We just want to know what we should do to help."

Development worker, Dundee



This section focuses on information which workers and managers may find helpful to reflect on their service provision to trans women. The information is arranged in a 'question and answer' format, which we hope helps make the guidance accessible. The questions were mainly identified by asking workers and service managers providing women-only services, and those providing mainstream services, what they would like to know if they could ask anything about trans women and provision of services.



In providing responses to these questions, reference has been made to legislation protecting trans women. The majority of these protections arise from the Equality Act 2010. The Act covers people who are proposing to undergo, are currently undergoing or have undergone a process (or part of a process) of gender reassignment. The Act makes it clear that it is not necessary for people to have any medical diagnosis or treatment to gain this protection; it is a personal process of moving away from one's birth-assigned gender to one's self-identified gender. A person remains protected, even if they decide not to proceed further with transitioning.



Should women's only organisations provide a trans woman with the same quality of service they would provide to a non-trans woman? Could a women's only service which refuses to provide their services to a trans woman be deemed to be unlawfully discriminating?

Yes.

It is unlawful discrimination to treat someone worse than others because they have a protected characteristic (as identified within the Equality Act 2010), in this case gender reassignment. It would therefore not be acceptable to refuse to provide a service to a trans woman because she is trans. The Equality Act 2010 allows single sex services to make proportionate adaptations to how they provide their services in order to address the needs of a trans person. Therefore, just as a service might adapt its service provision to address the needs of a disabled woman, the service should explore ways in which a trans woman's needs can be met and how to ensure that she receives the same quality of service provided to non-trans women.

What about provision of services to trans women who identify as female, but who have not yet begun living as women in all aspects of their life?

There are a number of reasons why someone who identifies as female may not be living full time as a woman when they access your service. It may be that they feel unable to do so because they fear they could lose their job or they could be at risk of harm from a partner who disapproves of them expressing their female gender identity.

As mentioned, the Equality Act 2010 protects any trans person who 'intends to undergo, is undergoing or has undergone gender reassignment', which means that trans women who have taken any steps to move towards living as women are covered by the legislation. Services can be offered to women in many different ways, ranging from dispersed accommodation refuge provision, if appropriate, to outreach community support. While not all services may be appropriate for a trans woman who is not living as female in all aspects of her life an effort can still be made to meet her needs. Where fear of harm from a partner is preventing her from expressing her gender identity, the support your service provides could directly enable her to increase the areas of her life in which she feels able to live as a woman. It is helpful to think from a flexible person-centred position of how individuals can be included in appropriate service provision rather than focusing on defining rigid requirements for access to your service. What is important is not to automatically exclude someone from service provision just because they are not living as a woman in all aspects of their life. Rather than focus on where someone is in their transition, it can be more helpful to provide your service based on how individuals identify their gender identities.



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Should we ask someone to show a GRC (gender recognition certificate) when offering a service?

People who have a GRC are provided with enhanced privacy rights and, in common with all other trans people, they do not have to disclose the fact that they are trans or have a GRC. Service providers are not entitled to see or record the details of a GRC. Asking for evidence of someone's trans status also implies that the service user will be treated differently depending on the evidence they provide. Likewise, service users should not be asked to provide any other evidence of their gender reassignment history, such as medical information or name change documents.

Is it legal to ask someone whether they are a trans woman when assessing for access to women only services?

Service providers need to think about why they require this information, what the purpose of the information is, and what they intend to do with it. It is illegal to treat someone less favourably on the basis of a protected characteristic, and asking if someone is trans suggests that you might treat that service user less favourably as a result.

Ideally, services want to foster an ethos and environment in which service users feel able and comfortable to discuss with staff any needs they have which relate to a protected characteristic. All service users should be informed of your inclusive equality policies and the level of confidentiality they can expect when using your service. Good practice would be to not ask directly whether a service user is a trans person, but to make it clear to everyone that your service is trans inclusive.

Carefully phrased diversity monitoring forms with questions about gender identity and trans status can be used. Such monitoring should be anonymous, asked of all service users, and not compulsory. It should be made clear on any diversity monitoring form how the information will be used, who else will see the information, how anonymity is protected, the purpose of the information, and that answering is optional.

What if a person approaches the service and I'm not sure of their gender identity?

Many trans women feel compelled by society to present a very typically 'feminine' appearance in terms of clothing, hairstyle and make-up in order to increase the likelihood of other people accepting them as women. As a result, it is rather less likely that staff may think that a trans woman's gender identity will not be visually clear. If a person is accessing a women-only service, wearing clothing typically associated with women and using a feminine name it is likely that they identify as a woman. Many transgender women will mark their transition by beginning to use a typically female name. This can be one way to recognise someone's gender. If someone's voice, bone structure or other aspects of their physical body appear androgynous or masculine, this should not be used to undermine her gender identity as a woman.



All women should be supported to have available to them a wide range of possible feminine, androgynous or masculine expressions of their gender. Irrespective of how any woman expresses her gender, she should not be challenged by service providers on her 'femaleness'. Some women may present more ambiguously, using a name which is typically used by both genders (Lee, Leslie, Stevie, etc.). If practitioners are in any doubt as to someone's gender identity, they should ask the individual politely and discreetly whether they prefer female, male, or gender neutral pronouns.

What pronouns should I use to refer to a trans person?

A person who identifies as a certain gender, whether or not they have taken any hormones or had surgery, should always be referred to using the pronouns appropriate for that gender. Therefore, trans women should be referred to using female pronouns (she, her, hers) and trans men should be referred to using male pronouns (he, him, his). Some non-binary people prefer to use gender-neutral pronouns such as using 'they' instead of 'he' or 'she' and this should be respected.

If a person has not specifically asked you to use particular pronouns, then use the pronoun that is consistent with the person's current name and gender expression. For example, if a person uses a female name then female pronouns are appropriate. Likewise, if someone with an androgynous name is wearing female clothing, then female pronouns are appropriate. If the person's appearance and name are both very androgynous then politely and discreetly ask them whether they prefer female, male, or gender neutral pronouns.

If you accidentally use the wrong pronoun simply apologise and continue the conversation. A prolonged explanation or justification may make someone feel more uncomfortable. Making a mistake happens, however, if you purposely continue to use the wrong pronouns or refuse to identify someone as their appropriate gender this would be seen as unlawful discrimination and harassment.

What if our new resident is only living in her new gender part of the time?

There are many reasons why people might present differently in different situations, at different times. The period of obvious physical transition is the period at which trans people are most likely to experience transphobia, and an individual may be particularly aware of personal safety. Trans women may feel that they need to present in the gender they were assigned at birth in circumstances such as travelling, and at work, but feel safe enough to present in their acquired gender at home, or in refuge. Some may fear losing access to their children if they do not agree to an ex-partner's demands that they present in their birth assigned gender in front of their children.

This is no indicator of someone's commitment to their transition and should not be seen as such. The important thing to do is to recognise that there are many reasons why a trans woman may not currently be able to transition full-time, and to ask her what you can do to make her feel most safe.

An additional possibility may be that your new resident may not identify within a binary of gender, and may identify as predominantly female, but may wish to express other facets of her gender identity as well.



What about funding? How could we provide service to a woman whose birth certificate may identify her as male?

If you are concerned about this you should approach your funders and discuss this issue directly with them. A trans woman's entitlement to receive a women only service is not dependent on her having a Gender Recognition Certificate or having had her birth certificate amended. Your funders are bound by the same legal duties and responsibilities that services are, and therefore should be happy to accept any changes you wish to make to your services to ensure that the needs of trans people are met to the standard required by law. If you are making changes to your service that go beyond legal requirements (for example, extending a women's service to also include trans men) then you should discuss these with your funders as well. It is very likely that they will see any changes that positively address equalities issues as being acceptable. You should prepare for these discussions by making sure that you are clear about the changes you want to make, the reasons you want to make these changes and the benefits to your services users you expect these changes will achieve. You might also want to think in advance about how these changes add value to the agreements you already have in place with your funders.

How should we refer to and record details of our service user in our files?

Trans people don't need to show a GRC (Gender Recognition Certificate) in order to change over the name and gender on their day-to-day documents and records – including for refuge and support services. Indeed, as it is necessary to live fully in the acquired gender for at least 2 years before applying for a Gender Recognition Certificate, a refusal by an employer or service provider to allow this change in name and gender at the start of an individual's gender reassignment process would unfairly prevent that individual from later being able to apply for a Gender Recognition Certificate and would therefore be discriminatory.

This means that as soon as your service user advises you of their change in name and/or pronouns, you must refer to them and document details of them as such in your records. It is not usually necessary to record any details of someone's gender reassignment history or trans status in records, and this should only be done for specific support reasons with the full permission of the service user. This information must be treated as strictly confidential, and services must show that they have ascertained that the fewest possible relevant people will come into contact with this information.

Is it legal to refuse a service to a woman with a trans history if it would make other service users uncomfortable?

Any person who identifies as a woman and is living fully as a woman should not be differentiated from other women on the basis that she has a trans history. Where a trans woman is still in the process of transitioning, then there might be rare occasions requiring a service to be provided differently to her. Under the Equality Act 2010, people who provide separate and single-sex services, such as refuges, can only provide a service differently to a trans woman in a way which is less favourable compared to other women under exceptional circumstances. These circumstances depend on the facts of the individual case – this means that 'blanket' bans or policies barring people from accessing services are not acceptable.



Discrimination against trans people is not acceptable and therefore the bar for a service provider to restrict service provision in this way is very high – the use of the exception has to be exceptional. Decisions made cannot be based on personal prejudice but on evidence of clear detriment to others, and even then the provider will need to show that a less discriminatory way to achieve the objective was not available, such as increasing the level of privacy available within changing facilities.

In the circumstance that other service users say that they are uncomfortable sharing a service with a trans woman, this is rightly seen as no reason for the trans woman to be moved. The service has to make any decision about provision based on good practice rather than prejudice. In this situation, we would work to educate other service users – much in the same way that we would if we received comments regarding other service user's ethnicity, religious affiliation or sexual orientation.

Difficulties for newly arriving service users could be prevented through some proactive measures. For example, the intake procedure at some women's refuges includes informing new residents of the following: 'We house many different women here. We welcome women of different races, different religions, women with mental health issues, lesbian and bisexual women, and transgender women'. This discussion would be held irrespective of whether any trans people were in the service at that point.

Should we talk to other women that use the service to let them know that a trans woman will be joining us?

This information should only be shared with other service users following consultation with the trans service user regarding their own safety and comfort, and it would not be legal to do without explicit consent from the service user.

Once a person (who has been living in their new gender for over two years) applies for a Gender Recognition Certificate, they gain additional privacy protections under the Gender Recognition Act 2004. Section 22 of the Gender Recognition Act 2004 makes it a criminal offence, with a substantial fine on conviction, for any person to inappropriately disclose information which they have acquired in an official capacity about an individual's gender history without the trans person's consent. There are only a very few exceptions, for example if the information is specifically required by the third party for the prevention, or investigation, of a crime.

All trans people, regardless of whether they have a GRC, are protected by the harassment provisions of the Equality Act 2010. Breaching a trans person's privacy by talking about their trans status or gender history to other people without their permission would likely constitute unlawful harassment.



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Are men likely to put on women's clothing to gain admittance to women's refuges?

Sometimes women's refuges are concerned that abusive men will put on women's clothing to gain access to women's refuges. This concern doesn't match the experience of refuges that have adopted policies that accept trans women. The authors of this guidance have never heard of a scenario like this happening and believe that it is extremely unlikely to occur. If this unlikely situation were to occur, we believe that intake staff would be able to recognise that the person is not sincerely identifying as someone who has experienced gender based violence: this would be integral to the broader risk management of abuser access to safe spaces.

What should we do to support someone who is already using our service, who tells us that they have a non-binary gender identity?

Just as you would with any other service user who was telling you something personal to them, be supportive. It is likely that they are disclosing this information to you because they feel safe and trust you and the service.

Many people who have a non-binary gender identity continue to live mostly in the gender they were assigned at birth so it is quite likely that the service user will remain eligible to use women only services. They may or may not want other service users to know about their non-binary gender identity so be sure to listen to their wishes about how they want to be referred to publicly. Encourage the service user to discuss with you at their own pace how they feel and what they want and need. Let them know that you will uphold their preferences in regard to using gender-neutral pronouns and avoiding referring to them as a woman. Remember to speak positively and appropriately about the person's identity. Make sure that staff use appropriate pronouns and names and ensure that your service is a safe space for the service user.

What should we do to support someone who is already using our service, who tells us that they are planning to transition to live as a man?

Just as you would with any other service user who was telling you something personal to them, be supportive. The individual has probably been thinking about this for a long time and it is likely that he is disclosing this information to you because he feels safe and trusts you and the service.

Transition is a process and not something that happens over-night, so the service user and you as the service provider do not need to make any decisions about the service provision straight away. When it is appropriate, talk through the options that he has and what he would like to happen. Someone who identifies as a trans man may no longer feel comfortable accessing a service that is for women once he has started his transition to live as a man, so be informed about other options in the area and listen to how the service user feels and what he wants and needs.



It is important to be aware of the limited support and refuge accommodation available for men. Many trans men, especially men who are in the early stages of their transition may feel that a men's service or accommodation would not feel safe to them. It is therefore important to listen to the concerns and needs of the service user.

Could you still offer support, but in a different way? This could be done by offering individual, rather than group support or providing support in a different location. Could your service think about providing a service to all transgender people, including trans men?

Throughout this process remember to speak positively and appropriately about the person's identity. Make sure that staff use appropriate pronouns and names and ensure that your service is a safe space for the service user.

Why are some people resistant to recognising trans women being included in the services that we provide to all women?

There are a number of reasons why some people fail to proactively welcome all women to women only services. One reason might be related to the historical struggle that many people have had when acquiring funding and recognition for the needs of women experiencing male violence. By failing to acknowledge trans women unconditionally as women and instead focusing on their history living as male, some people think that including trans women in women only services weakens the argument that women require women only spaces in response to violence.

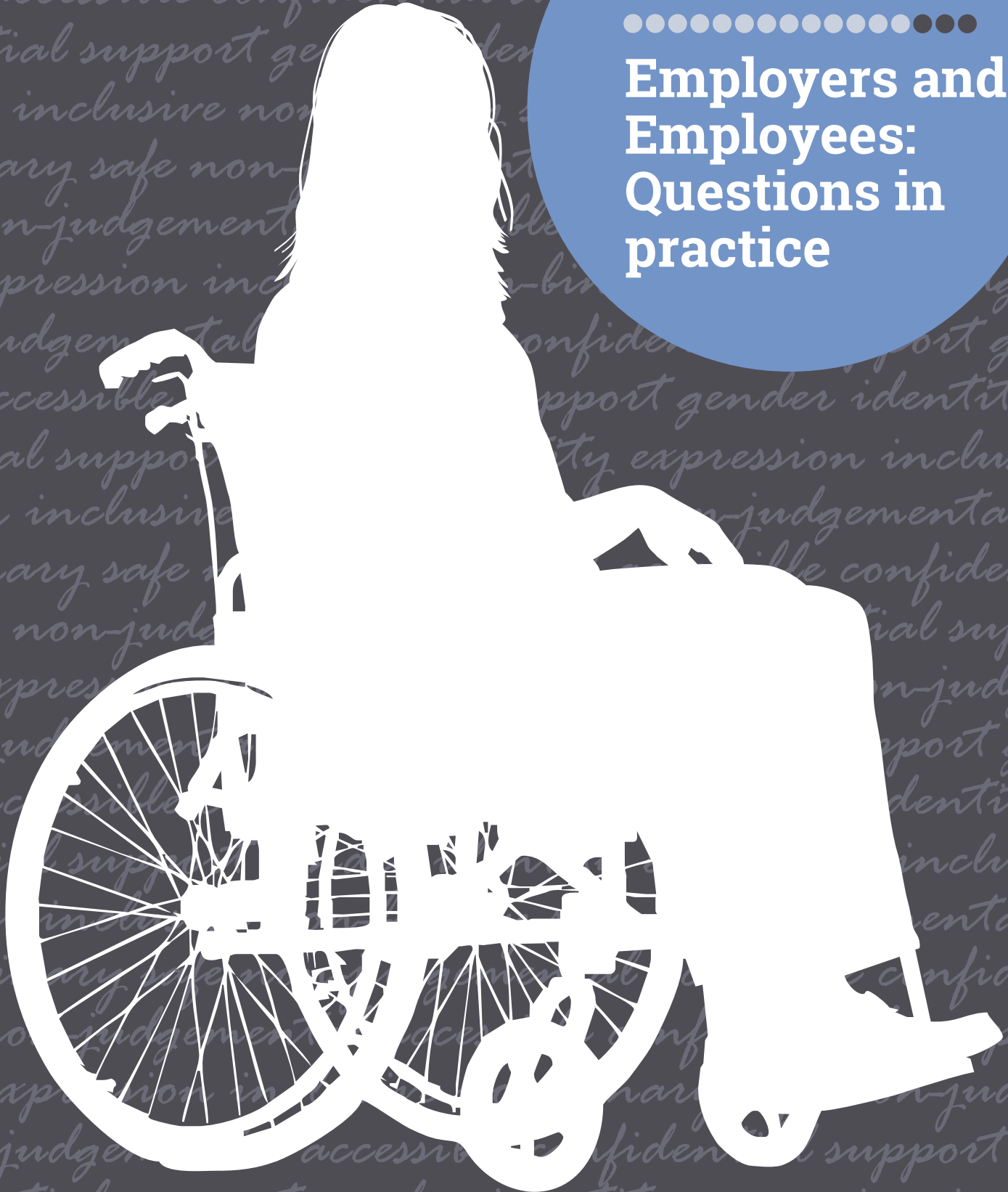
Arguing that since trans women have socialised as men and experienced male privilege means that they have not experienced the gendered oppression faced by non-trans women in society is based on a misunderstanding of the experience of trans women.

Many trans women were aware of their female gender identity from a very early age and had gender variant childhoods during which their femininity resulted in them experiencing gender based bullying and oppression. While trans women (especially those who have transitioned later in life) have been forced to socialise as men and may have experienced a form of male privilege, it is not the same experience of male privilege experienced by non-trans men. For trans women, the distress and fear involved in suppressing their gender identity will have interfered with their ability to take advantage of the male privilege offered them by society. Similarly, while a lack of female socialisation can lead to awkward interactions until a trans woman builds up her experience living as a woman, social awkwardness does not make the trans women a threat to other women. Trans women experience gender based violence merely for being trans and trans women find transition compounded by gendered oppression and violence directed at them as women. To claim that trans women have not experienced gendered oppression ignores the reality of trans experiences.



Section 2

Employers and Employees: Questions in practice



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This section of the guidance focuses upon the recruitment and employment of transgender staff. In most cases, the gender of an employee is of no relevance to their ability to do the job.



Organisations which provide a single-sex service, recruiting typically only women, may need to inform themselves of their responsibilities and legal position with respect to the recruitment and support of trans employees.

As for guidance provided relating to provision for service users, this guidance focusses on trans women with the protected characteristic of gender reassignment.

If an employer is in any doubt of their legal requirements with respect to employment of trans staff, we recommend initial contact with the Equality and Human Rights Commission Scotland, LGBT Youth Scotland or the Scottish Transgender Alliance (see Appendix 6).

Should I ask about an applicant's gender history when we recruit for new staff?

No.

It should not be expected that applicants and interviewees for employment would wish to disclose their trans status or gender reassignment history. There is no obligation for a person to disclose their trans status or gender reassignment history as a condition of employment. Many have experienced prejudice and harassment as a result of disclosure. It is not a question that should be asked at interview, as it is not a relevant criterion in selection. If they choose to disclose, this is not in itself a reason for not offering employment and non-disclosure or subsequent disclosure are not grounds for dismissal.

If Human Resources/Personnel departments or local administrators are informed of the individual's trans status or gender reassignment history, they should not disclose this to the members of staff leading the recruitment, as this is not relevant information to the selection for the post. Disclosures of this nature to other staff should be dealt with in the same way as any other confidential personal disclosure.

What about our usual security checks and occupational health questionnaires?

The documents and forms used for security checks and medical screening will seek information that may lead to identification of a current trans status or previous gender reassignment. This information should remain confidential and the disclosure of this information should be restricted to those personnel involved in security and medical vetting procedures. Any subsequent paperwork that indicates the individual's trans status or gender reassignment history should not be accessible to other personnel.



The spirit of the law would suggest that, similar to following Disability Discrimination Guidance, if it is necessary to request documents which might identify someone's transgender status, this should be done only after conditional offer of a post.

Trans people completing a disclosure form as part of the protecting vulnerable groups (PVG) scheme are not required to disclose their gender history to their employers. There is a PVG mechanism to allow trans people to provide previous names directly and confidentially to Disclosure Scotland. More information can be found at:

<https://www.disclosurescotland.co.uk/publications/documents/ARTICLE-TRANSGENDER.pdf>

Can trans women work in women's only organisations?

Yes.

A person should not be discriminated against because they have undergone, are currently undergoing, or intend to undergo gender reassignment. For this reason a trans woman who lives as a woman should be allowed to work in a women's only service. If someone has a gender recognition certificate then they must be treated in exactly the same as any other woman who is applying for a post in a single-sex service. As with service users it is not permitted to ask a trans woman to show a gender recognition certificate and she is under no obligation to tell an employer that she has a trans history. As with any other woman who is applying for a Genuine Occupational Qualification (GOQ) post, it is legal to ask her to show documentation identifying her as a woman. To avoid discrimination this should be the same evidence asked of all women who are being offered a post.

There are only exceptional circumstances where this would not be the case. The Equality Act 2010 allows for a GOQ that a post be restricted to people without the characteristic of gender reassignment. Applying such a requirement will only be objectively justified in exceptional circumstances. As of 2014, it appears that such a GOQ has not been implemented for any post within Scotland.

Legal bit: Fortnum v Suffolk County Council (ET 2000)

Ms. Fortnum (a male to female transsexual woman) was employed as an assistant day care officer who was required to give occasional intimate personal care to male and female clients. In May 1999, the Council told her that she could no longer continue to provide this intimate personal care to one of the female clients. The tribunal considered that the Council's reliance on a genuine occupational qualification – that these services could not be provided effectively by someone undergoing gender reassignment (Section 7B(2)(d)) was problematic in part because there was no evidence to show that the Council had addressed the issue of whether or not the service could be provided effectively by Ms. Fortnum. Her claim was successful.





Can a women only service only employ a trans woman if she has a Gender Recognition Certificate (GRC)?

No.

The provisions within the Equality Act 2010 do not mean that trans women without a GRC cannot be employed, and each post should be considered to see whether it could be offered with or without adjustment to all women. A Genuine Occupational Qualification (GOQ) exists when the specific nature of a job, or duties attached to it, require it to be undertaken by members of one sex. The minimum legal requirement is that a trans woman with a GRC must be regarded as legally female in regard to a GOQ restriction of a post to female applicants. A women only service can go further than this minimum requirement though and can accept as eligible any trans woman who has documentation identifying her as female.

Should we record details about an employee's trans status?

Records maintained on the personnel file should not overtly refer to a previous name, and records made prior to name change should be updated if appropriate. Access to these records showing change of name and any other details associated with the individual's trans status or gender reassignment history, such as records of absence for medical treatment in this connection, should be restricted to staff who 'need to know'. 'Need to know' refers to those directly involved in the administration of a process, for example the Occupational Health, Human Resources and Pension administrators.

Once a person (who has been living in the gender with which they identify for over two years) applies for a Gender Recognition Certificate (GRC), they gain additional privacy protections under the Gender Recognition Act 2004 making it a criminal offence, with a substantial fine on conviction, for any person to inappropriately disclose information which they have acquired in an official capacity about an individual's gender history without their permission. Whether or not a person has applied for a GRC, inappropriate disclosure of their gender history without their permission is a form of unlawful harassment under the Equality Act 2010.

Transsexual people may choose voluntarily to disclose at a secondary level, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. The individual to whom a disclosure is made should observe strict confidentiality; any further disclosure should only be made with the prior consent of the individual.

What should I write if I request or complete a reference for my employee?

If giving or requesting a reference for someone moving to a new job, the reference should be in the name requested by the employee. If a previous employee asks you for a reference, you should use only their current name and gender within the reference even if they only transitioned after they finished working for your organisation.

It may sometimes be necessary for a transgender 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.



Legal bit: Employment tribunal decision: X v Brighton and Hove City Council (2006/7)

In June 2007 the Brighton Employment Tribunal ordered Brighton and Hove City Council to pay compensation of £34,765.18 to a former employee. In 2003 the teacher registered with a teacher recruitment agency in order to seek work and sought a reference from her previous manager at the Council. She lost the opportunity to obtain work as a result of her previous manager revealing her change of gender to the recruitment agency, despite her request that this should not be disclosed. Her previous manager initially delayed responding to the request for a reference. When he did respond, he faxed a secret side memo that disclosed her former name, stated her previous gender, and referred to her as 'he or she', 'him', and 'her'.

Should I tell other staff members that our new employee is a trans woman so that we can support her better?

Disclosing a person's trans history to colleagues or service users without the trans person's consent can be unlawful gender reassignment harassment and if the trans person has a gender recognition certificate then it can even be a criminal offence. The trans person should be supported by management to decide to whom their trans history is disclosed.

What do I need to do to make sure that my employee does not experience discrimination in our organisation?

Bullying, harassment and discrimination are unfortunately common, and experienced by many trans people.

Examples of unlawful discrimination and harassment:

- Refusing to recruit or to promote as a result of trans status
- Refusing to allow a member of staff time off for gender reassignment
- Deliberately excluding a trans person from non-work related activities (i.e. staff night out)
- Verbally or physically threatening a trans person
- Sexual harassment of a trans person, including demanding to know what genitals they have
- Revealing the trans status of a person to others, either by disclosing information to individuals or groups – in other words, outing someone (note: this is also a criminal offence if the person has a gender recognition certificate)
- Claiming ignorance or confusion about trans issues in order to continue intentional abuse and discrimination
- Making offensive 'jokes' or demeaning comments about trans people



The key to ensuring that a trans person feels comfortable in their employment is to have trans-inclusive workplace policies and to provide proactive trans equality training to staff so they understand the importance of respecting the identities, decisions and needs of trans people. Ensure that managers are trained to be able to recognise any form of discrimination or potential opportunities for discrimination and be confident in tackling any discrimination effectively.

What if one of my current employees advises me that they identify as having a non-binary gender identity?

Just as you would with any other employee who was telling you something personal to them, be supportive. It is likely that they are disclosing this information to you because they feel safe and trust you and their colleagues.

Many people who have a non-binary gender identity continue to live mostly in the gender they were assigned at birth so it is quite likely that the employee will remain eligible to work in a women only GOQ post. They may or may not want other employees and service users to know about their non-binary gender identity so be sure to listen to their wishes about how they want to be referred to publicly. Encourage the employee to discuss with you at their own pace how they feel and what they want and need. Let them know that you will uphold their preferences in regard to using gender-neutral pronouns and avoiding referring to them as a woman.

It is also important to note that an individual that identifies as non-binary may still express their gender in a way that is perceived to be stereotypically male or female and may not necessarily change their name to a gender neutral one.

Remember to speak positively and appropriately about the person's identity. Make sure that staff use appropriate pronouns and names. Anyone can change their legal name at any time, regardless of whether or not they are also changing the gender they live in, so you should update their name and title on their employment records immediately upon the employee's request.

What if one of my current employees advises me that they wish to transition to live as a man?

An employee may first advise you that they wish to transition many months or even years before they actually decide to change the gender in which they live. Concentrate on ensuring they feel safe and supported to discuss their needs and their preferred timescales for making any changes to their name and gender for employment purposes. During the initial stages of medical gender reassignment treatment, changes in physical appearance due to hormone treatment can take several months to become noticeable. Good practice is to work collaboratively with the employee to mutually agree the timescale for their transition from female to male, recognising that this may include the option of continuing to work in a female only GOQ post while presenting in an androgynous manner for a period of weeks or months during the early stages of gender reassignment.





Trans people don't need to have a GRC (Gender Recognition Certificate) in order to change over their name and gender on their day-to-day documents and records – including for employment purposes. This means that when your employee decides that they are ready to change their name and gender for employment purposes, you should start using their new name and pronouns both in person and for their employment records.

In the period between them advising you of their wish to transition and them actually starting to live as a man, it is important to reconsider whether every post in your organisation must be filled by women. You should not consider dismissal of the trans man from a female only GOQ post until you have fully investigated taking other action such as changing some of the duties of his post to enable it to no longer need to be a GOQ post or redeploying him to a different non-GOQ role. Are there enough women to cover the parts of the service provision necessary? If so, can your employee be given pieces of work which are suitable for a male employee to undertake? If the employer does not feel that there is a suitable alternative role available, the employer must be able to show that a GOQ applies to that particular job, and that the way they have treated the individual is reasonable in all the circumstances. Even if a GOQ applies, there could still be unlawful discrimination if the employer behaves unreasonably.

How do I make all the necessary changes for my employee for pay and tax purposes?

This web address <http://www.hmrc.gov.uk/payerti/employee/changes/gender.htm> marks the page which explains the full process for employers to make changes to your employee's gender status with the HMRC, including raising a new tax code, recalculation of pension dates and NIC deductions.

Is my employee protected if they need to take a period of time off work in order to transition?

Under the Equality Act (2010), it continues to be unlawful discrimination to treat trans people less favourably for being absent from work for gender reassignment treatment than they would be treated if they were absent because they were ill or injured; or if they were absent for some other reason and it is not reasonable to be treated less well.

We do not specify a minimum or maximum time that employers should allow for treatment. If, however, the trans employee is absent for a long period (for example, due to unusually severe complications following surgery), absence management and other options may be considered in the same way as for any other person who is medically unfit for work.

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Appendix



Appendix 1: Terminology



We recognise that service providers who are beginning to think about inclusion of transgender people may not be familiar with many of the terms used when discussing trans issues. Below is a list of some of the terms that you may come across.



Language can be an emotive issue, with different people feeling comfortable using different words and nouns to describe their gender identity or expression. It is therefore important to be respectful in the language that you use and ensure that individual service users and employees are referred to using the language that they identify with.

Sex

This term refers to biological and anatomical characteristics, which can be defined as female, male or intersex.

Gender

The socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for one's sex.

Gender identity

A person's internal sense of where they exist in relation to being boys/men, girls/women, or non-binary.

Gender expression

A person's external gender-related clothing and behaviour (including interests and mannerisms).

Sexual orientation

Is a term used to describe a person based on who they are emotionally and physically attracted to. For example, trans women can be described as straight if they are attracted to men, lesbian if they are attracted to women or bisexual if they are attracted to both men and women.

Transgender people / trans people

This is an umbrella term used to describe a whole range of diversity of gender identity and expression, including transsexual people, non-binary people and cross-dressing people.

Transsexual people

This is a medical term used to describe people who have a female assigned sex but a male gender identity or those who have a male assigned sex but a female gender identity. Transsexual people experience an intense emotional and psychological need to undergo gender reassignment (transition) to fully live in accordance with their gender identity. Many transsexual people have hormone treatment and some have various surgeries to help align their physical body with their gender identity.

Intersex people

People whose external genitals, internal reproductive system or chromosomes are in between what is considered clearly male or female. People born with these kinds of variations are often referred to as intersex people and there are many different intersex variations. Intersex people most often define as men or women. Some may identify as transgender.

Cross-dressing People

This is a term used to describe people who dress, either occasionally or more regularly, in clothes not associated with their birth assigned gender. Cross-dressing people are generally happy with the gender they were assigned at birth and do not want to permanently change the gender in which they live or to alter the physical characteristics of their bodies. They may dress in particular clothing in order to better express different aspects of their personality or just because they feel more comfortable doing so.



Cross-dressing men are sometimes referred to as transvestite men; however this term should be avoided as it has negative connotations related to early medicalisation of this behaviour.

Non-binary people

This term refers to individuals whose gender identity does not conform to traditional ideas of gender as a binary. They therefore feel uncomfortable thinking of themselves as simply men or women and instead may describe their gender identity as somewhere in between or may reject defining their gender at all. They may also be referred to as third-gender, androgyne, gender-fluid, genderqueer, non-gendered or any of a large number of other terms.

LGBTI

This is the acronym used to talk about lesbian, gay, bisexual, transgender and intersex people or their equality and human rights.

Transphobia

Verbal or physical harassment directed at individuals who are or are perceived to be transgender.

Gender reassignment (transition)

The term refers to the personal and individualised process of a trans person moving away from the gender they were assigned at birth to live in accordance with their gender identity. For example a trans woman may be described as undergoing gender reassignment from male to female. This may or may not involve medical treatment in the form of hormones or surgical procedures.

Gender Recognition Certificate (GRC)

This is a document issued by the UK government that provides full legal recognition of a trans person's acquired gender. It can be sought once someone has lived fully in their acquired gender for at least 2 years. Possession of a GRC enables a person to change the gender on their birth certificate if it was issued in the UK and provides additional privacy protections.






Appendix 2: Relevant legislation



The Equality Act 2010 replaces the complicated and numerous array of previous UK anti-discrimination Acts and Regulations and covers nine different protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.



A person is regarded as having the protected characteristic of gender reassignment under the Equality Act 2010 if that person proposes to undergo, is undergoing or has undergone any part of a process of reassigning their sex by changing physiological or other attributes of sex. The Equality Act 2010 expanded protection for trans people because it removed the need for medical supervision and introduced protection from indirect discrimination. It also extended protection against direct discrimination to cover situations where a person is treated less favourably because they are perceived to have a specific protected characteristic or because they associate with someone who does.

The Act also introduced a new Public Sector Equality Duty which covers gender reassignment in full, requiring public bodies to consider the need not only to eliminate discrimination but also to advance equality of opportunity for trans people.

The Equality Act (2010):

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

Gender Recognition Act 2004

The Gender Recognition Act 2004 sets out the process for individuals to apply for a Gender Recognition Certificate (GRC) after they have been living full-time in their acquired gender for at least 2 years. It is not necessary for someone to have undergone any hormone treatment or surgery to receive a GRC. People with a GRC can apply for a corrected birth certificate if their birth was registered in the UK and gain additional privacy protection of their gender history. A person who has received a GRC is not required to show their GRC to others such as employers or service providers. It is not an identity document and will not be carried on the person. Trans people do not need to possess a Gender Recognition Certificate in order to change over their day-to-day documentation or to use facilities for their acquired gender. As it is necessary to live fully in the acquired gender for at least 2 years before applying for a Gender Recognition Certificate, a refusal by an employer or service provider to allow these changes at the start of an individual's gender reassignment process would unfairly prevent that individual from later being able to apply for a Gender Recognition Certificate and consequently would be discriminatory.

Appendix 3: Checklist for services

The following checklist will allow you to track your progress to developing a safe and positive service for transgender service users. This is not exhaustive, but rather provides a guide to areas of your service to consider.

Champion

It can be useful for your organisation to nominate a champion for transgender inclusion within your service. This person can be the contact for other organisations to get more information or to coordinate staff training and ongoing development.

Policies

Do you have policies that explicitly mention transgender people? Policies to check and develop may include:

- Staff handbook
- Equality and Diversity
- Dignity at work, anti-bullying
- Equal opportunities monitoring
- Disciplinary/grievance procedures
- Transition at work
- Volunteer policy

Services should also develop a clear transgender inclusion policy which sets out what services they provide and who may access these services.

LGBT Charter Mark

Once these steps are completed your organisation is well on your way to being able to be accredited through the LGBT Charter of Rights programme. The LGBT Charter mark provides services with a clear way of advertising that they provide a positive and inclusive service to all LGBT people. For more information on the LGBT Charter Mark process visit

www.lgbtyouth.org.uk/charter

Training

Training is an excellent way to build your team's confidence to improve practice on transgender issues and enable them to challenge discrimination. Including:

- All staff (including administration and finance staff) undertaking transgender awareness training.
- Key staff undertaking further supporting transgender service user training.
- Staff provided with clear guidance on transgender policies as part of their induction training.

Advertising

It is essential that your service includes transgender people. Ways to do this could include:

- A clear statement that you provide a service to transgender people on your website
- The inclusion of transgender people within information leaflets, flyers and other advertising.
- Displaying a LGBT Domestic Abuse Project poster or other relevant poster prominently within your service.
- Displaying a clear statement of who you provide a service to within your waiting room or reception area.
- Gaining, and subsequently demonstrating, the LGBT Charter on your website or leaflets.

Your Practice

- Ensure that initial assessment interviews include an equality statement that indicates your service is transgender-inclusive and provide a subsequent opportunity for service users to discuss any equality needs or concerns.
- Ensure that diversity monitoring forms are inclusive of transgender people and that staff are aware of the related confidentiality issues (see Monitoring section).
- Make links with local LGBT and transgender organisations and social groups in your area.



Appendix 4: Good practice monitoring at initial meeting



Trans people are often wary about revealing that they are transgender. They may feel particularly uncomfortable about discussing their gender identity in person and may not feel able to directly answer a question relating to their gender identity.



One way to send an inclusive message is to ask about different equality issues in an open-ended question and to include a statement within initial meetings that make it clear that you will respect all identities within your service. See example below.

For a more detailed guide to transgender equality monitoring please see the Scottish Transgender Alliance 'Trans Equality Monitoring Guide'. This can be found at <http://www.scottishtrans.org/trans-rights/practice/equality-monitoring/>



I didn't want to tell any service providers about the relationship problems as explaining details would have required me to come out... I was worried service providers would be ignorant of trans identities and potentially even quite prejudiced."

Out of Sight, Out of Mind?

At we strive to ensure that we treat all service users, staff and volunteers with respect and provide a positive and safe space to work and access services. We are aware that there may be additional barriers to accessing support for people who identify with one of the protected characteristics. These are:

- **Age**
- **Disability**
- **Gender Reassignment (transgender people)**
- **Marriage and Civil Partnership**
- **Pregnancy and Maternity**
- **Race**
- **Religion and Belief**
- **Sex (gender)**
- **Sexual Orientation**

Are there any of these that you believe would impact on you or the service that you receive that you would like to tell us about?



Appendix 5: Good practice for websites and advertising material



As far as we know, no trans women have ever used our service even though we have advertised the service as open to 'all women'. What should we do to make the service more accessible?



Advertising services as available to 'all women' makes assumptions of equality, presuming that all women will feel equally welcomed and equally able to access the service irrespective of background or identity. For many non-trans women, and for many workers whose own backgrounds have not prevented them approaching their service for employment, this kind of advertising may feel appropriate. It can feel confusing to understand that a statement of 'all women', a statement of attempted and intended inclusion, might be misinterpreted.

It can be difficult and upsetting for workers to recognise that many groups of women will have experienced such levels of hostility, disrespect, and lack of understanding, that advertising inviting 'all women' might not be enough to reassure potential service users of their reception. Some potential service users will need explicit statements that they will be welcomed, and more importantly, safe if they approach the service. For this reason, it is important express exactly who is meant by the phrase 'all women'.

Sometimes workers will identify problems that they foresee with working this way. They imagine that by outlining individual groups of women, they might accidentally miss out one group, and thus exclude that group. There are a number of ways that individual groups of women can be addressed in advertising (i.e. websites and leaflets), and we have included some examples here.



We welcome service users and staff from all backgrounds including those with diversity in religion and belief, race, age, sex, gender identity and gender expression, gender reassignment, sexual orientation, pregnancy and maternity or disability. We actively seek to eliminate discrimination and harassment on any of these grounds, and to ensure that staff, visitors and service users feel safe, welcomed, valued, included and respected."

Another way to ensure that different groups of women, including trans women, feel included and welcomed by the service is to look at representing different groups within the website. This may be done by pictures or images (where appropriate), by anonymised quotes from service users (including trans women), or by having a webpage with relevant information which may appeal to different groups of women. Additionally, links to other relevant sites, including sites which provide transgender support, will show trans women that you are aware that they may wish to use your service. The Scottish Transgender Alliance can assist you in selecting suitable images and links for inclusion.

Another way to show support may be to work towards achieving LGBT Youth Scotland's LGBT Charter. Once achieved, placing the mark on your website will show LGBT service users that you have gone through a process of learning and improvement and are trying to make your service safe and welcoming.



Appendix 6: Contacts and further information

LGBT Domestic Abuse Project

LGBT Youth Scotland

www.lgbtdomesticabuse.org.uk

Provides information for service providers and LGBT people who are experiencing domestic abuse. Managed by LGBT Youth Scotland.

LGBT Youth Scotland

www.lgbtyouth.org.uk

Scotland's largest youth and community-based lesbian, gay, bisexual and transgender (LGBT) organisation. Provides youth groups for young people ages 13-25; delivers training and policy support to professionals; undertakes research and policy engagement.

Scottish Transgender Alliance

www.scottishtrans.org

Scotland's only dedicated trans and intersex equality and human rights project. Provides information and training for service providers and employers on trans and intersex equality policy and good practice.

Equality Network

www.equality-network.org

The Equality Network works for lesbian, gay, bisexual, transgender and intersex (LGBTI) equality and human rights in Scotland.

LGBT Helpline Scotland

www.lgbt-helpline-scotland.org.uk

0300 123 2523

Scottish helpline for LGBT people to discuss the issues affecting them, including domestic abuse.

GIRES

(Gender Identity Research and Education Society)

www.gires.org.uk

Information for trans people, their families, and the professionals who care for them.

Survivor Project

www.survivorproject.org

A non-profit organization dedicated to addressing the needs of intersex and trans survivors of domestic and sexual violence (American site).

National Centre for Domestic Violence

www.NCDV.org.uk

Provides emergency service to survivors of domestic abuse regardless of gender or sexual orientation.

Broken Rainbow

www.broken-rainbow.org.uk

0300 999 5428

UK-wide helpline for LGBT people experiencing domestic abuse

a:gender

www.agende.org.uk

Support network for transsexual, transgender and intersex staff in the civil service.

Press for Change

www.pfc.org.uk

The UK's leading experts in Transgender Law.

Mermaids UK

www.mermaidsuk.org.uk

Family and individual support for teenagers and children with gender identity issues.



Guidance for Employers and Agencies

TUC

www.tuc.org.uk/sites/default/files/tucfiles/lgbt_equality_at_work_2013_online.pdf

A comprehensive guide to addressing LGBT equality in a trade union context.

Women and Equality Unit

<http://www.equalities.gov.uk/PDF/Gender%20reassignment%20-%20a%20guide%20for%20employers%202005.pdf>

Gender reassignment – a guide for employers.

Galop

<http://www.galop.org.uk/wp-content/uploads/2011/05/final-shine-report-low-res.pdf>

Shining the Light: 10 keys to becoming a trans positive organisation. This resource is aimed primarily at LGBT organisations, however contains extremely useful advice and information that can be used by a range of services.

Equality And Human Rights Commission

www.equalityhumanrights.com

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Disclaimer

The information in the guidance document is for general guidance on your responsibilities and is not intended to provide legal advice. If you need legal advice about your responsibilities or intended action, please contact a solicitor.

We have tried to ensure that the information in this guidance is as accurate and up-to-date as possible. We will not, however, accept liability for any loss, damage or inconvenience arising as a consequence of any use of, or inability to use, any information in this guidance. We are not responsible for claims brought by third parties arising from your use of this guidance. We assume no responsibility for the contents of referenced documents.

The inclusion of a reference should not be taken as endorsement of any kind.



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Stronger Together



Guidance for women's services on the inclusion of transgender women

