

Employment Policy for Gender Reassignment

Amendments			
Date	Page(s)	Comments	Approved by

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Joint Staff Consultative Committee

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ASHFORD & ST PETER'S HOSPITALS NHS TRUST

EMPLOYMENT POLICY FOR GENDER REASSIGNMENT

Key Principles

This document sets down some key principles and framework which

- Supports the individual member of staff
- Provides a framework for management
- Reflects the overriding duty of care for patients
- Ensure that safeguards are in place to protect patients, individual members of staff and colleagues

Framework for Reviewing Individual Cases

1. When a member of staff considers embarking on gender reassignment, he/she should inform the line manager
2. The manager will refer the member of staff to the Consultant Occupational Health Physician.
3. The Occupational Health Physician will undertake an initial assessment and obtain consent to write to the Psychiatrist involved in the staff's treatment requesting a full medical report.
4. Following confirmation from the Psychiatrist that the member of staff is ready to undertake a trial period as the opposite sex, the Occupational Health Physician will inform the manager.
5. The manager will then discuss with the member of staff the practicalities of working in the environment while going through the "real life" test which will include
 - Informing colleagues and managers
 - Change of uniform
 - Change of name
 - Changing and toilet facilities
 - Any limitations on duties undertaken

Staff undergoing gender reassignment will continue to wear the uniform and comply with the dress code of their original gender. Change of uniform/dress code for the new gender identity can only happen when the Psychiatrist has confirmed that the individual is ready to undergo the 'real life test'.

The authority to agree these elements rests with the manager except in relation to duties.

Where the duties undertaken include chaperoning of patients or undertaking intimate procedures, careful consideration will be given to the appropriateness of continuing to undertake full duties or to adjust duties during the gender reassignment process. Any decision will be based on

- whether there is a genuine occupational qualification (GOQ)
- if so, whether any change of duties is reasonable in all the circumstances

The final decision about change of duties will be made by the head of profession/department with advice from a Senior Human Resources practitioner, advised by the Occupational Health Manager.

Code of Conduct

Staff are reminded to act at all times in accordance with their own professional Code of Conduct or the Trust's Code of Practice for Support Workers. Staff are expected to act at all times in the best interests of the patients and to do nothing that would bring the Trust into disrepute.

Legal Context

Volume 2, E&OH	Section 1		Issue 1	Ratified July 2004	Page 2 of 4
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The Sex Discrimination Act 1975 (SDA) makes it unlawful to discriminate on the ground of sex in employment, education and the provision of housing, goods, facilities and services. The Sex Discrimination (Gender Reassignment) Regulations 1999 extended to the SDA to make it unlawful to discriminate on grounds of gender reassignment, but only in the areas of employment and vocational training.

In employment and vocational training, the SDA protects individuals who are discriminated against because they:

- Intend to undergo gender reassignment
- Are currently undergoing gender reassignment
- Have already undergone gender reassignment

In certain circumstances it is lawful to discriminate in employment if there is a genuine occupational qualification (GOQ) for doing so. For example

- Privacy and decency – for example, a male care assistant whose job involves helping men dress or use the toilet.
- Personal welfare or educational services – for example, a female counsellor in a rape crisis centre.
- An employer cannot claim that a GOQ applies if there are enough other members of staff of the appropriate sex to cover the duties in question.
- The job involves the holder working in a private home and the employer because of the intimate contact in those circumstances can show reasonable objection.
- The job involves the postholder sharing accommodation, and it is not reasonable on privacy or decency grounds for an individual to do so with either sex while in the process of undergoing gender reassignment.
- The job requires the postholder to provide vulnerable individuals with personal services promoting their welfare, or similar personal circumstances, and in the reasonable view of the employer, those services cannot be adequately provided by a person while undergoing gender reassignment. An employee in such a post who commences the gender reassignment process should be transferred where possible to other duties.

Personnel Records

Trust records will only be changed when the appropriate deed certificates have been provided.

Birth Certificates

As at April 2004 it is not possible for a UK citizen who has undertaken gender reassignment to alter his of her birth certificate, although it is possible to obtain other official documents in the new identity.

Work Permits

Staff who are working in this Trust on a work permit or student visa are asked to comply with any work permit/visa regulations which may relate specifically to name change or gender reassignment in order that the work permit/visa continues to be valid.

National Insurance

Staff who change their name will need to inform the local social security office, providing the appropriate deed certificates. Entitlements to pension and state retirement age will remain the same as before gender reassignment.

Volume 2, E&OH	Section 1		Issue 1	Ratified July 2004	Page 3 of 4
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Pension

Entitlements to pension under the NHS Pension Scheme are based on the birth certificate and cannot be changed subsequently. The Pensions Agency will accept change of name where appropriate deed certificates are provided.

Professional Registration

The Nursing and Midwifery Council (NMC) requires any name change to be notified by the registrant as soon as practicable. This must include relevant documents to verify the change of name and gender.

For staff covered by other professional registration bodies, it is the responsibility of the staff member to find out the relevant requirements and comply with them.

Support for Staff

Staff wishing to speak confidentially to someone outside the organisation, can contact the Employee Assistance Programme on the freephone number 0800 282193 (minicom 0800282193), 24 hours a day, seven days a week.

References

Department of Education and Employment (1999) Sex Discrimination (Gender Reassignment) A Guide to the Sex Discrimination (Gender Reassignment Regulations 1999)
Equal Opportunities Commission (2003) Transsexualism