
Clinical Records Management for Gender Reassignment Patients Procedure

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Purpose of Agreement	This procedure sets out the approach taken within Solent NHS Trust for the management of Clinical Records relating to Gender Reassignment and Transgender Patients
Document Type	Organisational Wide Standard Operating Procedure (O-SOP)
Linked to Policy	IG03 Records Management Policy
Reference Number	Solent NHST/O-SOP/ IG03.1
Version	V1
Name of Approving Committees/Groups	Policy Steering Group, Clinical Executive Group
Operational Date	May 2022
Document Review Date	May 2025
Document Sponsor (Job Title)	SIRO
Document Manager (Job Title)	Data Protection Officer
Document developed in consultation with	Data Protection Officer
Intranet Location	Business Zone > Policies, SOPs and Clinical Guidelines
Website Location	N/A
Keywords (for website/intranet uploading)	Records Management, Clinical Records, Gender Reassignment, Transgender, O-SOP, IG03.1

Review and amendment log

Version Number	Review date	Amendment section no.	Page	Amendment made / summary	Changes approved by

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Clinical Records Management for Gender Reassignment Patients Procedure

1. INTRODUCTION & PURPOSE

This procedure sets out the approach taken within Solent NHS Trust for the management of Clinical Records relating to Gender Reassignment and Transgender Patients

The procedure should be read alongside the Trust's Records Management Policy

In summary the Trust's position is as follows –

1. Only persons who have “protected characteristics of gender reassignment” are explicitly protected under the Equality Act 2010.
2. The Equality Act states that a person has a protected characteristic of gender reassignment if the individual is to undergo, is undergoing, or has undergone a process (does not have to be a medical process / procedure) for the purpose of reassigning their sex by changing physiological or other attributes of sex.
3. The Human Rights Act also offers protection to individuals (whether or not that individual has obtained formal legal recognition in their acquired gender by being issued with a GRC).
4. An individual can obtain formal legal recognition of their acquired gender under the Gender Recognition Act 2004; but are not compelled to do so.
5. Names and titles on medical records can be changed at the point that the individual changes their gender role permanently (or sooner if this is requested and there is some evidence of the intended permanency) such that the individual has a protected characteristic of gender reassignment in line with the Equality Act.
6. Consequently, prior to obtaining a GRC; if an individual can show that they fall within (2) above, then the Trust should be changing an individual's name and title on their electronic or paper folder. This ties in with NHS Guidance which says “names and titles must be changed to reflect current gender status. This can be done as a matter of courtesy, and is not dependent on having a GRC”. Of course this should be discussed with the patient before being implemented.
7. Although there is no obligation to change the individual's historical notes contained in the file (as this could potentially put health at risk); it may be sensible to ensure historical information has limited access (confined to medical professionals) so that it is not accessed by administrative or reception staff.
8. NHS Guidance also suggests that letters and envelopes should be addressed in accordance with the individual's new gender role (unless they have requested otherwise).
9. Where a GRC has been obtained, the protection of historical gender information is sacrosanct, and may be subject to criminal sanction if breached unless it falls within limited exemptions.

2. LEGAL

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

The Equality Act also places a proactive duty on public organisations to promote equality of opportunity, foster good relations and eliminate unlawful discrimination between people who have the protected characteristic of gender reassignment and people who do not.

The Equality Act 2010 states that - “A person has the *protected characteristic of gender reassignment* if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the persons’ sex by changing physiological or other attributes of sex.”

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

A wide range of people are included in the term “trans”; gender fluid, transgender, people who cross dress only on an occasional basis, and other people who may identify as neither men nor women, but somewhere in between. *Only persons who have obtained “protected characteristics of gender reassignment” are explicitly protected under the Equality Act 2010.*

Gender Recognition Act 2004: The Gender Recognition Act 2004 provides transsexual people with the opportunity to obtain legal recognition in their acquired gender by being issued with a Gender Recognition Certificate (GRC). Anyone with a GRC will be legally recognised for all purposes as their acquired gender. With someone who has a GRC, as you know, any disclosure of information without consent about that person’s gender history may constitute an offence, unless by way of section 22 of this Act – (i) the disclosure is made to a health professional, (ii) it is made for medical purposes, and (iii) the person making the disclosure reasonably believes that the subject has given consent or cannot give consent. Further the exemption does not permit medical professionals passing on information freely about a “trans” individual’s medical history.

Human Rights: Everyone has protected rights under the European Convention of Human rights (ECHR). Some of the articles which protect these rights have important relevance for transgender people.

Article 8 indicates that everyone has the right to respect for their private and family life. As such Article 8 will include gender identity within its scope. Article 8 can ensure that the personal and medical data of transgender people without GRC status is given the same respect and level of confidentiality.

Article 14 advocates non-discrimination on protected grounds such as sex, race, colour...gender, belief etc. It is therefore essential that Human Rights are taken into account when delivering services.

Guidance: It is important that transgender individuals do not experience discrimination in the clinical setting. Medical professionals should use names and titles that the individual concerned regards as appropriate. If the situation is unclear, medical staff should discuss these issues with the individual privately.

Confidentiality is an especially sensitive issue for transgender individuals. Consequently it is the position adopted by the Department of Health and NHS generally that “no non-essential disclosure of an individual’s transgender status or history should occur”.

Whether there is a GRC or not, clinicians who need to pass on details to other medical staff should ask themselves –

- Is the information regarding the patient’s present or past gender status or gender treatment relevant to the circumstances?
- What would be the purpose of passing on such information – is it medically relevant?
- Is there a way of providing information that is relevant without necessarily referring to the individual’s transgender identity or history?
- Have names and pronouns been chosen so that the patient history around gender is not inadvertently exposed.

For example, it would be unacceptable if a clinician is referring a transgender woman to another medical professional for carpal tunnel syndrome to indicate in the referral letter that the patient used to be a man.

The question as to managing medical records more widely is a difficult one and can be a challenge for clinicians and medical staff. Names and titles on medical records may be changed at the point that an individual changes their gender role *permanently or sooner if this is requested, and there is some evidence of the intended permanency of the change.*

Whilst clinicians can change an individual’s name on their electronic folder or paper file, individual notes contained within these may not be changed because this may put health at risk.

However, letters and envelopes should be addressed in accordance with that new identity (unless the individual specifically requests otherwise).

The above ties in with NHS Guidance which indicates that “names and titles must be changed to reflect current gender status. This can be done as a matter of courtesy, and is not dependent on having a GRC”.

Further, a transgender individual can request that access to (electronic) sensitive information is blocked by the organisation which created the record so that access is limited to medical professionals only and receptionists / administrative staff for example will not be able to access the same level of information that a medical professional (i.e. doctor) could.

Although NHS guidance recognises that the practicality of a name change may lead to risks; there is not a great deal of clarity as to how those risks should be managed.

3. PROCESS

Guidance for the handling of Transgender Patient's Medical Records

There are three categories of Transgender Patient Medical Records, all of which require different actions and communications with patients.

1. **Change of name (not by deed poll)**

If a patient wishes to change the name they are known by e.g. from Jane Smith to John Smith, but **have not** done this by legal deed poll, they can have a “known by name” added to the medical records.

The patient needs to be aware that their records will still identify them by their birth gender and their birth name will be on their record, but they can be referred to by their preferred name.

No further action is required, with regards to the patients' medical records.

2. **Change of name (by deed poll)**

If a patient wishes to change the name they are known by e.g. from Jane Smith to John Smith and **have** done this through a legal deed poll, they can apply for a new NHS Number.

Once they have a new NHS Number the record will show their new name, but will still identify them by their birth gender.

The Trust needs to recognise that the patient now has a new record. You can NOT merge the records automatically. The following things need to take place;

- Provide the patient with a copy of their old medical records (Subject Access Request process should be followed)
- The patient should meet with the HCP to discuss the content of their old medical record and what the HCP feels should be included in the new record. This should be agreed by the patient, if the patient does not agree, they need to be advised of the risks of this and a note recorded in the old record; the information can not be transferred into the new record.
 - The HCP may want to consider writing a medical record summary to include in the new record. Content to be agreed with the patient
 - Copy the old record and redact information the patient does not wish to be shared (this could include the old NHS Number)
 - The patient may be happy to merge the records with no redactions, but this is their choice

3. **Change of name and gender (following a gender recognition certificate)**

If a patient has changed their name and gender, through a **gender recognition certificate**, they can apply for a new NHS Number.

Once they have a new NHS Number the record will show their new name and new gender.

The Trust needs to recognise that the patient now has a new record. You can NOT merge the records automatically. The following things need to take place;

- Provide the patient with a copy of their old medical records (Subject Access Request process should be followed)
- The patient should meet with the HCP to discuss the content of their old medical record and what the HCP feels should be included in the new record. This should be agreed by the patient, if the patient does not agree, they need to be advised of the risks of this and a note recorded in the old record; the information can not be transferred into the new record.
 - The HCP may want to consider writing a medical record summary to include in the new record. Content to be agreed with the patient
 - Copy the old record and redact information the patient does not wish to be shared (this could include the old NHS Number and old gender, including anything that may identify their old gender)
 - The patient may be happy to merge the records with no redactions, but this is their choice

4. EQUALITY IMPACT ASSESSMENT

A thorough and systematic assessment of this procedure has been undertaken in accordance with the Trust's Policy on Equality and Human Rights.

The assessment found that the implementation of and compliance with this procedure has no impact on any Trust employee on the grounds of age, disability, gender, race, faith, or sexual orientation.

5. REVIEW

This document may be reviewed at any time at the request of either staff side or management but will automatically be reviewed 3 years from initial approval and thereafter on a triennial basis unless organisational changes, legislation, guidance or non-compliance, prompt an earlier review.

6. REFERENCES AND LINKS TO OTHER DOCUMENTS

- Data Protection Compliance Policy
- Records Management Policy

7. GLOSSARY

Abbreviation	Full Name
GRC	Gender Recognition Certificate
HCP	Healthcare Professional

