

# Provision of goods, facilities and services to trans people

Guidance for public authorities  
in meeting your equality duties  
and human rights obligations

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# Introduction

## What is this guidance about and who should read it?

This guidance has been produced to help public authorities in England, Scotland and Wales meet their equality duties and human rights obligations in the provision of goods, facilities and services to trans users and potential users. It has been designed as a 'how to' guide targeted at public authorities' managers and front line staff of all levels and is illustrated with good practice examples.

Since April 2007, the gender equality duty requires public authorities to have due regard to the need to eliminate discrimination and harassment on grounds of gender reassignment in the fields of employment and vocational training (including further and higher education). The Equal Opportunities Commission (EOC, from which the Equalities and Human Rights Commission took over in October 2007) published guidance about how the gender equality duty applies in the area of employment and vocational training to transsexual staff.<sup>1</sup>

Since April 2008, the scope of the gender equality duty has been extended to further require public authorities to have due regard to the need to eliminate discrimination and harassment on grounds of gender reassignment in the provision of goods, facilities and services.

The Human Rights Act 1998 also places obligations on public authorities to take proactive steps to protect and respect fundamental values of fairness, respect, equality, dignity and autonomy for all their service users, including trans people and their families.

This guidance has been produced to ensure public authorities are clear on what they are expected to do to comply with the law and provide their trans service users with the goods, facilities and services they are entitled to.

## Definition of terms

### *What are public authorities?*

The general duty applies to all functions of every public authority. This includes councils, schools, hospitals and police authorities as

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<sup>1</sup>EOC (February 2007) 'Meeting the Gender Duty for Transsexual Staff', available at: [http://www.equalityhumanrights.com/uploaded\\_files/PSD/20\\_meeting\\_the\\_gender\\_duty\\_for\\_transsexual\\_staff.doc](http://www.equalityhumanrights.com/uploaded_files/PSD/20_meeting_the_gender_duty_for_transsexual_staff.doc)

well as central government departments. The definition of a public authority is 'any person who has functions of a public nature', which is the same approach taken within the Disability Discrimination Act 2005 and the Human Rights Act 1998. Because this definition is used, the organisations covered by the general duty are not set out in a list.

The gender equality duty applies directly to certain private or voluntary sector bodies when they are carrying out public functions on behalf of the state. An example of this is a private company who transports prisoners. Public bodies are still covered by the duty when services are contracted out to external organisations. This could include community transport, stationery or catering services.

#### *What goods, facilities and services are covered?*

This guidance is targeted at public authorities providing any goods, facilities and services including, for example, social work and health services, sports or leisure facilities, and council or housing association accommodation. School education services are not yet included although this is to be introduced by the Equality Bill.

The Sex Discrimination Act 1975 as amended to comply with the Gender Goods and Services Directive 2004/113/EC also prohibits discrimination and harassment by voluntary and private bodies in the provision of goods, facilities and services to a person who 'intends to undergo, is undergoing or has undergone gender reassignment'. In practice, this means that it is unlawful for pubs, shops, banks or insurance companies to discriminate against someone who 'intends to undergo, is undergoing or has undergone gender reassignment' in the provision of goods, facilities or services.

This guide concerns itself only with goods, facilities and services<sup>2</sup> provided by public authorities. However, many of the case studies contained in this guide provide examples of good practice of relevance to the charitable and private sectors.

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<sup>2</sup> The vast majority of a public authority's services will fall within s29 (goods, facilities or services) or s22 (education), not s21A which cover public functions. For more details, please refer to the gender equality duty code of practice for England and Wales and the code of practice for Scotland available at <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/codes-of-practice/>

*Which trans people does this guidance cover?*

The gender equality duty applies only to those trans men and women who intend to undergo, who are undergoing, or who have undergone gender reassignment.

Gender reassignment/transitioning designates processes by which a person commences to change permanently to a gender which is different from the one they have been assigned at birth. Altering one's gender is not a one-step procedure - it is a complex process that takes place over a long period of time. Gender reassignment or transition includes some or all of the following cultural, legal and medical adjustments: telling one's family, friends and/or co-workers; changing one's name and/or sex on legal documents; hormone therapy, and possibly (though not always) some form of chest and/or genital alteration.

The Equality Bill will remove the requirement for trans people to undergo gender reassignment under medical supervision and therefore require for public authorities to take into account the needs of a wider group of trans people when providing goods, facilities and services.

Moreover, 'public authorities also need to comply with the provisions in the Human Rights Act 1998 and ensure that they are taking 'proactive steps to secure people's human rights'<sup>3</sup> including the right not to be discriminated against (article 14) in the enjoyment of rights on any ground, including the ground of being transgender.

In the spirit of the Human Rights Act, public authorities should thus consider this guidance to inform their equality and human rights work and ensure that they respond to the needs of all trans people rather than only those people who 'intend to undergo, is undergoing or has undergone gender reassignment' under medical supervision or not.

We are conscious that it might be difficult for the employees of public authorities to fully recognise the spectrum of sub-groups there are among those who identify as trans or to feel comfortable in addressing adequately service users. In order to clarify this, we have provided a short definition of the main sub-categories in our Glossary on page 58.

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<sup>3</sup> See Equality and Human Rights Commission Human Rights Inquiry report published in 2009 available at <http://www.equalityhumanrights.com/human-rights/human-rights-inquiry/>

## Why is this guidance needed?

Everyone should be able to have equal access to the goods, services and facilities provided by public authorities. Yet, the Commission's recent Trans Research Review concluded that, 'While there are gaps in the research which makes it difficult to fully assess the picture of inequality in trans people's lives, the research that does exist paints a picture of lives affected by harassment, discrimination and violence.'<sup>4</sup>

Another influential report commissioned by the UK Government's Equalities Review in 2006 indicates that a large proportion of trans people do not use public services or leisure facilities for fear of discriminatory treatment.<sup>5</sup>

All public authorities in Great Britain have to have 'due regard' to the equality duty and ensure that their policies and practices do not discriminate against trans people. An important practical point which arises from this is that just because a public authority is of the view that there are few trans people in its area is not acceptable for it not to allocate resources. A public authority must balance the needs of the people it provides services to and address the most significant inequalities. Therefore even where the numbers of people involved are low, a public authority must take into account the seriousness and extent of the discrimination/inequality experienced.

Where public authorities ignore the realities of gender diversity, they are likely to find that trans service users will rightfully complain and issues can rapidly become very expensive, time-consuming and reputation-damaging legal cases.<sup>6</sup>

By considering in advance how to protect and respect fundamental values of fairness, respect, equality, dignity and autonomy for all service

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<sup>4</sup>Michell, M. and Howarth, C. (2009) Trans Research Review, Manchester: Equality and Human Rights Commission, p74, para 12.4

<sup>5</sup> Whittle, S., Turner, L. and Al-Alami, M., 2006. *Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination*

<sup>6</sup> The case of *A vs West Yorkshire Police* [2004] HL concerned a trans woman who was open about her past in her application to join the police. She was offered a post, gave up her former job, but the day before she was due to join West Yorkshire Police she received a letter refusing her the post on the grounds that she would not be able to fulfil the duties of a police officer as she would be unable to do intimate searches as those had to be performed by a member of the same sex as the suspect. She sued West Yorkshire Police and won the case at an Employment Tribunal. West Yorkshire Police appealed the case to the Employment Appeal tribunal, the Court of Appeal, and finally the House of Lords. It took almost six years from beginning to end, and it is estimated that almost a half a million pounds of public money would have been spent by the Police service and the then Home Office to defend their discriminatory position without success



users and ensuring their policies and practices fully consider and respond to the needs of trans people, public authorities have the opportunity to:

- Build trust among the trans community and allow more trans people to feel able to use the services/facilities they provide.
- Ensure that trans people feel valued as contributing and deserving citizens.
- Achieve better equality outcomes when providing services, goods and facilities to trans users or potential trans users. This will engender better health, education, social integration, etc. For example, a college welcoming trans students by presenting on its website how they offer support to those who wish to transition would reassure many students experiencing gender dysphoria and encourage them to apply.
- Ultimately, set the example for society challenging stereotypes to ensure that trans people are treated as human beings who deserve to access services, goods and facilities with the same respect and dignity as everyone else.
- Allow more trans people to express their trans status and for the trans community in the UK to become more visible and less 'hard to reach', which in turn should help public authorities comply better with their human rights obligations and their equality duties by facilitating data collection and enhancing involvement/consultation.

Although many managers and frontline staff in public authorities are strongly committed to ensuring equality and human rights for all their service users, they frequently express uncertainty about how to work to eliminate the particular inequalities and discrimination affecting trans service users.

Indeed, in October 2009, the Equality and Human Rights Commission (the Commission) contracted researchers to survey how a sample of public authorities was performing in meeting their duties towards transsexual people. The researchers<sup>7</sup> found gaps in current awareness and understanding about gender identity and trans issues and in the scope of the duties among the public bodies surveyed. There was also ignorance as to the full implications of human rights legislation for the work of public bodies. Some public bodies surveyed felt that practical

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<sup>7</sup> The findings of this survey have been summarised in the Commission guidance published in January 2009 on revising gender equality scheme available at: [http://www.equalityhumanrights.com/uploaded\\_files/PSD/a\\_practical\\_guide\\_to\\_revising\\_gender\\_equality\\_schemes.pdf](http://www.equalityhumanrights.com/uploaded_files/PSD/a_practical_guide_to_revising_gender_equality_schemes.pdf)

guidance on the equality duties and human rights obligations and how those applied to providing goods, facilities and services to trans people would help them perform better in this area. There was a strong feeling that guidance should include more case studies, be related to everyday life and work circumstances, and be in formats which could make sense to frontline workers as well as equality staff.

We have designed this guidance to respond to those expectations. We trust that public authorities will find the practical examples of best practice given in this guidance helpful to determine the actions that they can take to improve trans equality and human rights.

### **How is this guidance organised and what should you read?**

We have designed this guidance to ensure that people find the information they are looking for quickly. In order to do this we have structured this guidance as follows:

- Chapter 1 presents briefly the law requirements with regard to gender equality and human rights as well as the links there are between the two.
- Chapter 2 provides more depth in presenting the general principles public authorities should follow to ensure they comply with their equality and human rights obligations while providing goods, facilities and services to trans people. It also presents the benefits this will bring to trans people, the public authorities themselves and society overall.

All the other chapters are sector specific, allowing the reader to find the information relevant to their jobs quickly but also to learn from other sectors. The sectors covered are health and social care (Chapter 3), local government (Chapter 4), education (Chapter 5) and criminal justice (Chapter 6).

Each sector-specific chapter will provide the reader with:

- an overview of the types of goods, facilities and services most likely to impact on trans people
- information about key equality issues for trans people, and
- examples of good practice.

Finally, we have included:

- A Glossary to help people understand the terminology of relevant commonly used words and provide a guide to acceptable language.
- A short Appendix which provides references for those readers who would like to find additional sources of advice and guidance.

# Chapter 1: Including trans people in your equality and human rights work

## 1.1 What is the gender equality duty?

The gender equality duty (GED) came into effect on 6 April 2007 as part of the Equality Act 2006. The GED requires all public authorities within Great Britain, when carrying out all their functions, to have 'due regard' to the need:

- To eliminate unlawful discrimination and harassment on the grounds of sex
- To promote equality of opportunity between women and men

These two parts form the general duty. Public authority functions include policy-making, service provision, employment matters and statutory discretion, as well as decision-making. Having 'due regard' means that the weight given to the need to promote gender equality is proportionate to its relevance to a particular function.<sup>8</sup>

The GED is designed to shift the onus from individuals having to prove that they have been discriminated against to public bodies positively promoting gender equality. The focus is on setting up a gender inclusive policy and service in advance, rather than providing a policy to address failures of gender equality.

The duty states that it applies to men and women, but, as the European Court of Human Rights has held there is not a third sex,<sup>9</sup> it must be read as including trans men and trans women.

The GED applies only to those trans men and women who intend to undergo, who are undergoing or who have undergone gender reassignment. As stated in the introduction, gender reassignment includes some or all of the following cultural, legal and medical adjustments: telling one's family, friends and/or co-workers; changing one's name and/or sex on legal documents; hormone therapy, and possibly (though not always) some form of chest and/or genital alteration. So, rather than questioning a person's medical status, it is much easier to think of the provisions as inclusive of:

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<sup>8</sup> See the gender equality duty code of practice for England and Wales and the code of practice for Scotland available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/codes-of-practice/>

<sup>9</sup> Goodwin v UK Government (2003) ECHR, Application 28957/95

- all trans people who are intending to live permanently in their new gender role, or
- all trans people who are now living permanently in their new gender role.

The duty requires organisations to take action on the most important equality issues within their functions. The promotion of equal opportunities between women and men including trans men and trans women requires public authorities to recognise that identical treatment will not always be appropriate – for example Community Safety Partnerships should take into consideration that trans people can experience additional discrimination and harassment as a result of undergoing gender reassignment when planning and delivering their services.

Under the GED, authorities also have an obligation to eliminate discrimination and harassment towards current and potential trans staff. This will be extended to explicitly include an obligation to promote equality for trans staff and service users, associative discrimination and discrimination on grounds of perception under the proposed Equality Act 2010.

In order to meet the general duty, listed public authorities in England and Scotland are required to implement specific duties, which are presented in detail in Chapter 2. In summary, listed public authorities must:

- Prepare and publish a gender equality scheme, showing how they will meet their general and specific duties and setting out their gender equality objectives.
- In formulating their overall objectives, they must consider the need to include objectives to address the causes of any gender pay gap.
- Gather and use information on how the public authority's policies and practices affect gender equality in the workforce and in the delivery of services.
- Consult stakeholders (that is employees, service users and others, including trade unions) and take account of relevant information in order to determine their gender equality objectives.
- Assess the impact of their current and proposed policies and practices on gender equality.
- Implement the actions set out in their scheme within three years, unless it is unreasonable or impractical to do so.

- Report against the scheme every year and review the scheme at least every three years.

There are currently no specific gender duties for Wales. However, in the interests of clarity and transparency, the Commission advises public authorities to develop a gender equality scheme outlining their gender equality objectives and the action that is being taken to achieve them. You should prioritise action to address the most significant gender inequalities within your remit and take actions that are likely to deliver the best outcomes for gender equality.

The specific duties for Scotland are the same as for England, and also include:

- Scottish Ministers must publish reports every three years, in addition to the Scottish Executive's equality scheme and equal pay statement. These reports will set out the priority areas Ministers have identified for advancement of equal opportunities across the public sector, and provide a summary of progress made in these priority areas by the public sector.
- Educational establishments are specifically required to produce their own gender equality scheme and equal pay statement. Education authorities also have a responsibility to:
  - ensure that they gather information on the effects of their policies and practices,
  - assess the impact of those policies and practices on gender equality,
  - carry out steps to meet the duty in line with the education authority scheme, and
  - report on these activities.

## **1.2 What is the Human Rights Act?**

The principles in the Human Rights Act reflect the belief that everyone is entitled to certain minimum necessary fundamental rights and freedoms to enable them to flourish. The Act underpins basic ethical norms and provides a framework for balancing the rights of an individual against those of the wider community.

The Act gives everyone in the United Kingdom or subject to the jurisdiction of the United Kingdom government the entitlement to claim any of the specific rights set out in the statute. In other words, it gives people a legal basis within the UK civil law and court system to ensure

that the public services they receive comply with the European Convention on Human Rights, together with the underlying values of freedom, fairness, respect, equality, dignity and autonomy.

The Human Rights Act not only protects people from abuse by public authorities but also imposes some 'positive obligations' on public bodies to take proactive steps to secure people's human rights. Identifying and implementing such steps is usually qualified as 'adopting a human rights approach'.

### **1.3 Links between the human rights approach and the gender equality duty**

Adopting a human rights approach and working to eliminate unlawful discrimination and harassment on the grounds of gender as well as to promote equality of opportunity between women and men including trans men and trans women are interlinked:

- Both require public authorities to identify potential issues and to take proactive steps to prevent breaches of rights rather than reacting to *faits accomplis*.
- Both exist to ensure people are treated fairly and equally, with the dignity and respect all human beings are entitled to, and to ensure that everyone is free to make their own choice without undermining the rights of others.
- Both should lead to planning and delivering better services and to deliver better outcomes to people.

Adopting a human rights approach to planning and delivering goods, facilities, and services to trans people will mean that public authorities will have to take appropriate steps to eliminate unlawful discrimination and harassment and to promote equality of opportunity for all trans people rather than only those people who 'intend to undergo, are undergoing or have undergone gender reassignment'.

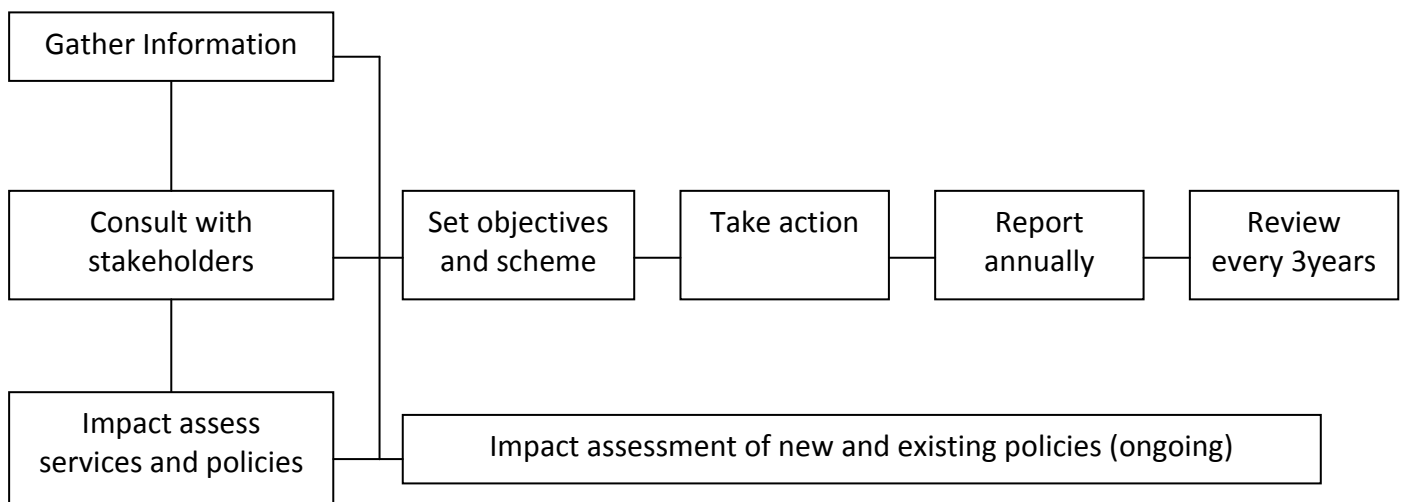
# Chapter 2: How to include trans people in your equality and human rights work: general principles

## 2.1 Gender equality specific duties

The specific duties are processes that listed public authorities have to follow to identify the actions they have to implement to deliver the required outcomes, leading to less discrimination and greater gender equality. The following chapters provide examples of the simple actions taken by some public authorities and the powerful outcomes that this has delivered both to trans people and to authority staff.

Although authorities that are not listed do not have to follow the processes of the specific duties, they still might find it helpful to do so in order to meet their obligations under the general duty. Doing so should also help public authorities ensure that the way they provide goods, facilities and services does not discriminate against trans people and promotes equality between men and women including trans men and trans women.

The various elements of the specific duties feed into each other in the following ways:





### *Gathering and analysing information*

Your first steps should be to gather quantitative and qualitative information on trans equality, at a local and national level. Gathering information about trans people can be difficult given that many trans people remain invisible. There is indeed very little statistical information available – for example, trans people are not included in the national census, General Household Survey or Labour Market Statistics.

Public authorities can however find ways to gather the information they need in relation to trans equality by consulting the following sources of information:

- The Equality and Human Rights Commission – we have some research publications on trans equality and human rights issues.<sup>10</sup>
- Trans organisations – they will also have publications (see Appendix) which will inform you of the key issues to consider.

Public authorities should use the information gathered to inform their equality impact assessment process (see below).

### *Consulting and involving stakeholders*

Trans people are arguably one of the most ‘hard to reach’ groups in Great Britain. As explained in the introduction, many trans people are not visible because they fear being discriminated against. Public authorities however can and should take the following steps to find and involve local trans service users and potential users:

- There may be a member of staff who champions trans issues (they may have a friend, partner or family member who is trans) who might have information about local groups you could involve and consult with.
- If your organisation has a lesbian, gay, bisexual and trans (LGBT) employee group or network, you should consult with their trans members.
- Other organisations in your area might already work with a trans stakeholder group. Indeed, to save ‘consultation fatigue’, we would encourage public authorities to work together and consult with the same trans service users group on all their equality and human rights work.

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<sup>10</sup> See the Trans Research Review published on the Commission website in 2009 available at: <http://www.equalityhumanrights.com/fairer-britain/trans-inequalities-reviewed/>

- You could also contact national organisations<sup>11</sup> as they might be able to put you in touch with trans service users willing to be involved and consulted in your areas. National trans organisations could also be consulted to ensure that the way you provide services, goods and facilities responds to the needs of trans service users and potential users.

You should always try to involve a diverse group of stakeholders in terms of gender, age and ethnicity. Young black trans men might face different issues and have very different needs compared with older white trans women. It is important that you consider whether it is appropriate to pay individuals or voluntary and community organisations for their participation. Payment may be appropriate if the tasks they are performing are something for which your organisation would normally expect to pay. For example, advising on the adaptation of a website to make it a more accessible tool, or acting as an expert consultant on particular issues. Payment may also be appropriate if you are asking an individual participant or an organisation to undertake a specific piece of work on your behalf. For example, organising and running meetings or writing a report.

### *Carrying out equality impact assessments (EIAs)*

As explained in our guidance on equality impact assessment,<sup>12</sup> carrying out EIAs is a legal requirement for many public authorities. More importantly, however, it is an effective way of improving policy development and service delivery, making sure that organisations consider the needs of their communities, identify potential steps to promote equality and don't discriminate. It enables evidence-based policy-making, which is at the core of modern public policy, and can allow efficiency savings through more effective services.

Impact assessment should feed into every stage of your work as an organisation. In practice, this means that those authorities that use an EIA template will need to ensure that it explicitly covers trans people and that the impact on trans service users and potential users of all relevant proposed or existing policies and practices is assessed to ensure that:

- any actual or potential for discrimination or adverse impact has been identified, and

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<sup>11</sup> Details of national trans organisations are available at: <http://www.equalityhumanrights.com/your-rights/transgender/trans-issues-getting-advice>

<sup>12</sup> Available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/guidance-and-codes-of-practice/general-guidance/>

- all opportunities to promote equality have been taken.

If a negative or adverse impact has been identified, public authorities should amend their policies and practices to remove it. If the negative or adverse impact amounts to unlawful discrimination then the impact must be removed.

You should use the information you gathered on trans equality at a local and national level (see above) to identify relevant policies and practices to be impact assessed. As a start, you should consult the sector-specific sections in this guidance to have a general view of the goods, services and facilities relevant to trans people in a sector.

The information and insights that you have gained from involvement and consultation with trans service users and potential users are also crucial to carrying out equality impact assessment enabling those affected by the way a public authority carries out its functions to have a real input in improving outcomes.

We would recommend for you to publish your EIAs so trans stakeholders can see how their views have been taken into consideration in amending relevant policies and practices and start building trust among the trans community which will prompt trans service users and potential users to participate in further consultation.

#### *Prioritising and implementing gender equality objectives*

The findings of these three processes should feed into your objective-setting and this should form the basis of your gender equality scheme.

The duty is about results not processes so you will need to establish and implement a concrete action plan to deliver your objectives.

#### *Reporting and reviewing*

You should report annually on the action you have taken and progress you have made with regard to implementing your objectives. This is in order to ensure transparency and build trust among the trans community.

Finally, reviewing your objectives at least every three years will ensure you are making progress and responding to new issues.

## 2.2 What about human rights?

As stated in the introduction, the gender equality duty currently applies to those trans men and trans women ‘who intend to undergo, are undergoing or who have undergone gender reassignment’. However the Equality Bill will make changes so that public authorities will need to consider a wider group of trans people when providing goods, facilities and services. In addition, public authorities also have to comply with the Human Rights Act and ensure that when providing goods, facilities and services, all people are treated fairly and equally including all trans people.

The Human Rights Act requires public authorities to take ‘proactive steps’ to secure people’s human rights. Currently, there are no prescriptive processes for public authorities to follow in order to demonstrate how they identify potential human rights issues or what steps they are proposing to implement to prevent breaches. In this context, public authorities should find using the processes provided by the gender equality specific duties helpful to consider how best to remedy existing human rights infringements and prevent future breaches. In doing so, they should look at the challenges faced by their trans service users and potential users, whether or not they ‘intend to undergo, are undergoing or who have undergone gender reassignment’.

Although, public authorities should systematically assess the relevance of all the rights listed in the Human Rights Act when they consider the services, goods and facilities they provide to trans people, we would recommend paying particular attention to the following rights:

- right not to be discriminated against (article 14) in the enjoyment of other rights
- right for private and family life, home and correspondence (article 8)
- right not to be subjected to torture, inhuman and degrading treatment or punishment (article 13)
- right of peaceful enjoyment of possessions and property (protocol 1 article 1), and
- right to education, including respect for the religious and philosophical convictions of parents (protocol 1 article 2).

## 2.3 Leadership and training

Experience suggests that an effective way for public authorities to mainstream equality and human rights into their work and deliver real outcomes to trans people would involve:

- designating a trans equality and human rights champion among its staff, and
- providing all its officers from leaders and managers to frontline staff with training on trans equality and human rights issues.

A champion, providing of course that he/she has relevant expertise and sufficient time to discharge his/her role, is one of the steps public authorities could implement to show leadership on trans issues.

In particular, the champion should be able to:

- Gain the trust and an in-depth knowledge of the local trans community, as well as an overview of the issues and needs of the wide range of sub-groups that form part of the trans community (for example, young, disabled, heterosexual, gay people).
- Dispel the myths and misinformation about trans people.
- Challenge the negative views some staff might have vis-à-vis trans people.
- Develop good relations between trans people and public authority staff.

The provision of equality and human rights training that addresses trans issues to public authorities' staff at all levels is as key as having a trans equality champion. Doing so will ensure that staff understand the obligations they have towards trans service users and potential users to comply with the equality and human rights obligations as set out in UK law. The Commission would recommend public authorities to involve trans people in delivering such training as it is the best way to challenge stereotypes among your staff and to make them realise that trans service users are as contributing and deserving citizens as they are.

## **Chapter 3: Health and social care service provision**

This section will provide you with:

- An overview of the types of goods, facilities and services most likely to impact on trans people in health and social care.
- Key issues and good practice examples.
- Additional examples of good practice by health and social care providers in using the gender equality duty and human rights act to improve service delivery and achieve better outcomes for trans people.

### **3.1 What goods, facilities and services in health and social care most impact on trans people?**

Public authorities need to assess the impact their policies and practices have on trans people in relation to all their goods, services and facilities provision. The health and social care goods, facilities and service situations that can have an impact on trans people include:

- Facilities and services which are single sex, especially those which require people to share living, changing or sleeping facilities, for example female and male hospital wards.
- Services that require trans people to allow another person, such as a medical professional or social care worker, to see their genitals or breasts, for example genito-urinary medicine and sexual health consultations.
- Services that require trans people to give detailed accounts of their personal histories, especially previous names or details of medical procedures undergone, for example social work case records and hospital admission forms.
- Facilities and services which anticipate service users having a particular risk or need profile predicated by a particular combination of physical sex characteristics with gender role, for example cervical or prostate screening services and fertility services.
- Goods that are usually only provided to people of a particular birth sex, for example the provision of contraception, sanitary towels and tampons or provision of drugs which are gender specific

### 3.2 Key issues and good practice examples

The Equality and Human Rights Commission (the Commission) Trans Research Review published in Autumn 2009<sup>13</sup> highlights persistent discrimination against trans people and inadequate service delivery, both in gender reassignment treatment and other areas of health and social care.

#### *Accessing gender reassignment treatment*

The 1999 Court of Appeal ruling in the case of R v North West Lancashire Health Authority ex pA, D and G<sup>14</sup> recognised that gender reassignment is the appropriate medical response to Gender Identity Disorder and that it would be unlawful for Health Authorities to operate anything that amounts to a blanket ban on funding in such cases. The gender equality duty also implies that it is unlawful for public authorities such as Primary Care Trusts in England and Health Boards in Wales and Scotland to operate blanket bans based solely on administrative or financial criteria in such circumstances.

The Human Rights Act 1998 imposed some 'positive obligations' on public bodies to take proactive steps to secure people's human rights. Public health and social care services need to ensure that they treat all their service users, regardless of their gender identity or what treatment they are receiving, fairly and equally, with dignity and respect.

Yet the Equalities Review research published in 2007 found that nearly one third of trans people surveyed had experienced problems obtaining funding for gender reassignment treatment. Nearly one third of trans people were refused access to even the initial assessment for gender reassignment treatment or were made to wait longer than six months after referral by their GP.

Furthermore, people intending to undergo or currently undergoing gender reassignment continue to experience difficulties in accessing fair, timely and high-quality medical assistance including counselling, hormone therapies and surgeries to support them achieving an effective and smooth integration into society in their new gender role.

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<sup>13</sup> Available at:

[http://www.equalityhumanrights.com/uploaded\\_files/research/trans\\_research\\_review\\_rep27.pdf](http://www.equalityhumanrights.com/uploaded_files/research/trans_research_review_rep27.pdf)

<sup>14</sup> R v North West Lancashire Health Authority ex pA, D and G [2000] 1 WLR 977

### *Accessing general health and social care services*

It is essential to remember that trans people, including those who do not seek to undergo gender reassignment medical treatment, will need, like everybody else, to access more general health and social care services over the course of their lives.

#### **Good practice example 1: Improving health survey accessibility to trans patients**

##### *What was done?*

Within the National Health Service, a team was designing a new online general health check-up survey for patients to self-complete. They carried out an equality impact assessment (EIA) of their planned survey design. The EIA alerted them to the potential negative impact for trans people of having to respond to compulsory sexual and reproductive health questions which assumed all service users would have physical sex characteristics in alignment with the gender in which they were living.

To address the issues raised in the EIA, the health survey designers consulted with a national trans equality group to determine ways to improve the accessibility of the online health check survey for trans people. Together the survey designers and the trans equality group identified that the survey would be more accessible to trans people if the sexual and reproductive health questions were optional rather than compulsory and if participants could self-select between answering male or female reproductive health questions regardless of the gender identity they select within any demographic questions.

##### *What was the outcome?*

The health check survey became more accessible to trans people as well as all other people from particular cultural backgrounds or religions who may have found it offensive or inappropriate to be obliged to respond to sexual and reproductive questions.

### *Mental health services*

Research carried out in Brighton and published in 2008 found that:

‘Those who identify as trans are significantly more likely to have difficulties in the last five years with significant emotional distress, depression, anxiety, isolation, anger management, insomnia, fears



and phobias, panic attacks, addictions and dependencies, and suicidal thoughts... Those who identify as trans are twice as likely to have had serious thoughts of suicide, more than three times as likely to have attempted suicide in the past five years and over five times as likely to have attempted suicide in the past 12 months as non-trans people.<sup>15</sup>

Although NHS Gender Identity Clinics are generally run within the remit of NHS Mental Health Services, they are not intended to provide general mental health support to trans people.<sup>16</sup> Trans people experiencing mental health problems need to be able to access mainstream mental health services on the same basis as any other person. It is important for general health and social care providers to ensure that their policies and practices with regards to services such as community psychiatric nursing care, psychiatric in-patient wards, occupational therapy, voluntary sector mental health drop-in centres, and social work services do not discriminate against trans people or leave them exposed to harassment from staff or other service users.

#### *Service provider attitudes and awareness*

The research conducted for the Equalities Review in 2007<sup>17</sup> found that many medical professionals clearly still have insufficient knowledge about trans people and their health needs, whether mainstream or related to gender reassignment. Indeed, service provider knowledge and/or attitudes can be very poor. The survey found in particular that:

- Although 79% (482 of 599) of General Practitioners (GPs) were willing to help, of these over 60% lacked appropriate information (365 of 599).
- 17% of trans respondents had experience with a doctor or nurse who did not approve of gender reassignment, and hence refused services.
- Only 6% of GPs were sufficiently knowledgeable, able and willing to help.

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<sup>15</sup> 'Count Me In Too – Additional Findings Report: General Health', 2008, Dr Kath Browne and Spectrum

<sup>16</sup> NHS Gender Identity Clinics primarily exist to carry out key assessments of readiness for hormones and surgeries

<sup>17</sup> Whittle, S., Turner, L. and Al-Alami, M. 2007 'Engendered Penalties: Transgender and Transsexual people's experiences of Inequality and Discrimination', London: Equalities Review

## **Good practice example 2: Creation of a trans-specific equality and human rights policy**

### *What was done?*

Greater Glasgow and Clyde NHS Board decided to create a trans equality policy as one of their single equality scheme actions. They approached both local and national trans organisations and established a working group with trans people and NHS health board staff to design the trans equality policy.

Greater Glasgow and Clyde NHS Board established their commitment for the policy to incorporate a human rights approach and to recognise the fullest diversity of gender identity. They found that most existing trans guidance only considered equality issues for people undergoing gender reassignment and therefore they arranged a very successful training day for their corporate inequalities team and other managers specifically on the lives and equality and human rights issues of trans people who do not intend to undergo gender reassignment.

To enable the best possible understanding of their human rights obligations in regard to gender identity, they proactively sought legal opinion to inform development. The resulting guidance addressed single-sex ward placement, rights to respect for gender identity in the absence of a Gender Recognition Certificate, and the rights of trans and intersex young people.

### *What was the outcome?*

The corporate inequalities team within Greater Glasgow and Clyde NHS Board significantly increased their understanding of the issues faced by trans and intersex people. They have committed to ensuring that the human rights principles of dignity and respect underpin their policies.

The team has established stronger links with trans groups locally and nationally who will be involved in further consultation and involvement as the policy becomes operational and is subject to review.

The range of gender reassignment medical services provided has been expanded in order to better meet the needs of trans service users. For example, access is now provided to electrolysis for hair removal which previously was not recognised as a need.

### *Hospital accommodations*

As stated on the Commission website,<sup>18</sup> clinical responses should be patient centred, respectful and flexible towards all trans people regardless of whether they live continuously or temporarily in the gender role that is opposite to their natal sex.

Trans people should be accommodated according to their gender presentation (the way they dress, and the name and pronouns that they currently use). Different genital or breast sex appearance is not a bar to this, since sufficient privacy can usually be ensured through the use of curtains or by accommodation in a single side room adjacent to a gender-appropriate ward.

It is also important to note that determining the best way to accommodate a trans person:

- does not depend upon them having a Gender Recognition Certificate or legal name change
- applies to toilet and bathing facilities (except, for instance, that pre-operative trans people should not share open shower facilities), and
- should not be influenced by the views of family members which may not accord to the trans person's wishes.

This approach may only be varied under special circumstances where, for instance, the treatment is sex specific and necessitates a trans person being placed in an otherwise opposite gender ward. Such departures should be proportionate to achieving a 'legitimate aim', for instance, a safe nursing environment.

This may arise, for instance, when a trans man is having a hysterectomy in a hospital, or hospital ward that is designated specifically for women, and no side room is available. The situation should be discussed with the individual concerned and a joint decision made as to how to resolve it. At all times this should be done according to the wishes of the patient, rather than the convenience of the staff.

In addition to these safeguards, where admissions or triage staff are unsure of a person's gender, they should, where possible, ask discreetly where the person would be most comfortably accommodated. They

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<sup>18</sup> See <http://www.equalityhumanrights.com/your-rights/rights-in-different-settings/health-and-social-care/being-treated-with-respect/hospital-accommodation-for-trans-people-and-gender-variant-children/>

should then comply with the patient's preference immediately, or as soon as practicable. If patients are transferred to a ward, this should also be in accordance with their continuous gender presentation (unless the patient requests otherwise).

If, upon admission, it is impossible to ask the view of the person because he or she is unconscious or incapacitated then, in the first instance, inferences should be drawn from presentation and mode of dress. No investigation as to the genital sex of the person should be undertaken unless this is specifically necessary in order to carry out treatment.

### **Good practice example 3: Improving patient care by promoting trans equality**

#### *What was done?*

The Royal Preston Hospital received a request for hysterectomy surgery from a trans man. The hospital gynaecologist and the manager of the hysterectomy unit reviewed their current policies and practices and adapted them to ensure that they promoted trans equality and took into account the patient's human rights. These included ensuring that:

- The patient was systematically offered the first appointment of the day, so as to avoid the embarrassment of being one man among many women in the waiting room.
- The surgeon discussed the recovery process options with the patient in terms of ward and level of post-surgery care but ensured that the patient was given the ultimate choice.
- Prior to his stay, the patient was introduced to the nursing and theatre staff who with his permission had been given a brief about him being a trans man undergoing traditionally female surgery.
- On the day of the surgery, the patient had his details registered in a separate, private area, rather than in the main reception in front of other people.
- The patient was allocated a separate room, off the main ward, with a 'Do not Disturb' sign to restrict access. In order to maintain his privacy, his initial and surname were written on the patient board rather than his first name.
- A specific nurse was allocated his post-operative care in order to maintain his privacy.

*What was the outcome?*

The trans man, who had avoided the procedure for years for fear of an undignified experience felt more confident to proceed with the surgery and made a good recovery. The hospital maintained his privacy and dignity, alongside that of the other patients on the ward.

The hospital staff are more sensitive to trans people's needs, have clear and sensible policies in place to deal with trans patients and feel more confident in practice in doing so appropriately.

*Personal care, dignity and autonomy*

Some trans people have physical or learning disabilities which mean they require assistance with personal care. The freedom to express identity through choice of clothing is something that many people take for granted, but it can be very difficult to achieve for a disabled trans person if they need help from other people to get dressed, or to purchase and choose their clothing.

Disabled trans people may also find it harder to know how other people perceive their gender presentation. For example, if someone is partially sighted they may need additional support from social care workers to find a way to convey more easily their gender identity through their choice of clothes and hairstyle.

Often social care workers providing personal care to a disabled service user are expected to be of the same gender as the service user. This can result in staff allocation issues if a disabled service user wishes to start gender reassignment or lives in more than one gender role.

**Good practice example 4: Acknowledgement of older and disabled trans people' needs**

*What was done?*

The Adult and Community Services Directorate within Lancashire County Council found through information gathering that the percentage of disabled trans people living in their area was equal to the national average. In addition, they found that they had the fourth largest population of LGBT people in England and Wales<sup>19</sup> and a large number

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<sup>19</sup> The 2001 census data on same sex couples living together.

of older trans people were retiring to the area.<sup>20</sup> The Directorate thus estimated that a significant number of trans people in their area who were at risk of, or already suffering from, illnesses and disabilities associated with getting older might not be accessing the care services they needed for fear of prejudice and discrimination.

A rolling programme of training provided by a trans organisation (including myth-busting, awareness and understanding of trans-specific issues) was arranged for Physical Disability and Sensory Impairment direct care staff, ancillary and admin staff and managers across Lancashire.

*What was the outcome?*

Staff who are commissioned to work with disabled and or older trans people are much more confident in supporting them, particularly in relation to situations involving safeguarding issues, rehabilitation, self-directed support, personalised budgets, writing care plans and in providing personal and intimate care.

Disabled and or older trans service users feel that better consideration is given to maintaining their dignity because staff show respect for their gender identity by enabling them to express it.

### **3.3 Additional examples of good practice**

#### **Good practice example 5: Inclusion of trans equality in EIA**

*What was done?*

Since 2006, Velindre NHS Trust in Wales has explicitly included trans equality within their equality impact assessment form. This helped the Trust to identify functions other than those in relation to access to gender reassignment provision where policies and practices may have adversely impacted on trans people's lives.

In particular, they identified sex-specific cancer-screening services as an area where action was needed to ensure cervical screening referral processes for female-to-male trans men were made with dignity and respect.

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<sup>21</sup> Whittle, S., Turner, L. and Al-Alami, M. 2007 'Engendered Penalties: Transgender and Transsexual people's experiences of Inequality and Discrimination', London: Equalities Review

They also identified that the ongoing long-term use of hormones would increase the risk of breast cancer for trans women aged 50-70 and provided trans-specific training to screening staff, including radiographers and frontline staff to ensure that their breast cancer screening protocol was trans inclusive.

*What was the outcome?*

Radiographers carrying out mammography screenings for breast cancer are much more skilled in providing screening to trans men and trans women in a supportive and respectful manner.

Other frontline staff are more confident in processing screening referrals to ensure that the pronouns, designations such as Mr or Mrs, and names used in letters respect the gender identity of trans patients regardless of their legal sex or physical characteristics.

Overall, this encourages an uptake in screening by trans people as they feel more confident and comfortable accessing trans-friendly services. Over time, this should facilitate earlier cancer diagnosis and intervention for trans people.

**Good practice example 6: Procedures put in place to respect trans patient privacy**

*What was done?*

A GP-led health centre in England that has several trans patients adopted a human rights approach to ensure there was not inappropriate disclosure of a patient's trans status. It was decided that the best way to ensure trans patients were treated with dignity and respect was to:

- Ensure patient records had no 'trans marker' to protect the patient's privacy.
- In the instance that doctors and other staff felt necessary to disclose a patient's trans status to another practitioner, they sought the patient's permission first.
- In order to seek permission, a form was developed so that the patient could consent in writing. The form allowed the information to be accompanied by a note reminding the practitioner referred to of their obligations to respect the patient's privacy.

*What was the outcome?*

- Trans patients feel confident using the health centre and in control with regard to disclosing their trans status.
- Trans patients can maintain privacy when being treated for non-trans-related conditions.
- Trans patients who have agreed for their doctors to disclose their status to another practitioner are spared the potential embarrassment caused by having to repeatedly disclose their status themselves. Practitioners know in advance what to expect when the patient walks into the room.

**Good practice example 7: Developing trans inclusion in social care services supporting survivors of rape and sexual abuse**

*What was done?*

Edinburgh Women's Rape and Sexual Abuse Centre re-assessed their policies with regard to providing goods, facilities and services to trans people following the change of law in April 2008 (see Introduction for details). They then developed a new policy on trans inclusion in close consultation with a national trans organisation.

To facilitate the practical implementation of the new policy, they arranged detailed and tailored trans inclusion training for all their staff. Once they were confident their staff team were comfortable working with trans people, they began promoting their service as fully trans inclusive to local trans community support groups.

*What was the outcome?*

Edinburgh Women's Rape and Sexual Abuse Centre successfully became a fully trans-inclusive organisation. Trans community support groups and other voluntary and statutory agencies have welcomed the new inclusion and have begun making referrals of trans people to the service. Trans people in Edinburgh who have experienced rape or sexual abuse in adulthood or childhood now for the first time feel that they have a source of support. In particular:

- Trans women know they will be provided with the same quality of individual and group services as any other women.
- Trans people know they will be provided with specially tailored individual services which respect their identities.



## Chapter 4: Local government service provision

This section will provide you with:

- An overview of the types of goods, facilities and services most likely to impact on trans people in local government.
- Key issues and good practice examples.
- Additional examples of good practice by local government service providers in using the gender equality duty and human rights act to improve service delivery and achieve better outcomes for trans people.

### 4.1 What goods, services and facilities in local government most impact on trans people?

Trans people will routinely access a range of local government services. For much of the time trans people will access these services without the service provider's knowledge of their gender reassignment status. There are however some key elements of service provision that may impact trans people adversely which public authorities need to be aware of.

As some local government authorities (like district councils in England) do not have responsibility for educational services and as there are specific issues for each service, education services are covered separately as a specific guidance section. Local government authorities who are responsible for social care should also refer to Chapter 3.

While public authorities need to assess the impact their policies and practices have on trans people in relation to all their goods, services and facilities provision, research conducted for the Equalities Review in 2007 identified areas where trans people were most likely to experience discrimination.<sup>21</sup> Access to leisure services, safety in public spaces and neighbourhoods, and changing documentation all featured significantly.

Local government goods, facilities and service situations which can have an impact on trans people include:

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<sup>21</sup> Whittle, S., Turner, L. and Al-Alami, M. 2007 'Engendered Penalties: Transgender and Transsexual people's experiences of Inequality and Discrimination', London: Equalities Review

- Facilities and services which are single sex, especially those which require people to share changing facilities, for example leisure facilities such as gyms and swimming pools.
- Service provision where a trans person may disclose their trans status as a factor in a personal/community safety issue or where being trans makes them vulnerable, for example anti-social behaviour and hate crime services.
- Housing services.
- Services which may hold personal information regarding a trans person's previous name and gender, for example, housing, benefits, library records or council tax records.

## 4.2 Key issues and good practice examples

### *Accessing leisure facilities*

Some trans people experience problems while accessing leisure facilities – particularly those involving gender-specific changing facilities.

The Equalities Review research found that 47% of trans respondents did not use public leisure facilities for fear of discriminatory treatment – for example being refused access or having that access limited.

It is unlawful for a leisure centre to refuse to permit a transsexual person to use their facilities. However, the use of services by individuals who may present an ambiguous appearance and be highly self-conscious represents a difficult issue.

The Department for Culture, Media and Sport has issued some guidance in 2005<sup>22</sup> to ensure trans people gain access to leisure facilities in the same way as any other individual. The guidance states that it is good practice in club or facility management to provide:

- Changing facilities with cubicles which offer greater privacy and feel safe.
- Where no cubicles are available, club officials should discuss where trans individuals would be most comfortable changing.
- Courteous and sensitive treatment from staff or club officials.
- Existence of an equality policy that outlines the facility or club position on trans people and participation, including action that can be taken in the event of unfair discrimination.

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<sup>22</sup> See reference in Appendix 1

- Staff training on the issues involved and ensure they are aware of the organisation's equality policy.

It is important to note that not only will these steps cater for the needs of trans people but all users of the club and facilities are likely to benefit including people with diverse religious beliefs and disabled people.

Other users might feel uncomfortable about sharing facilities with trans people. The guidance indicates that the provision of good-quality facilities, an open and welcoming atmosphere and well-trained staff may help alleviate such discomfort and enable all users to participate fully in the centre's activities.

### **Good practice example 1: Improving access to swimming pool facilities for trans people**

#### *What was done?*

New Forest District Council consulted with local trans support groups and learned that many trans people were very restricted in using leisure facilities, due to previous bad experiences or from fear of negative attitudes from staff and other users. The Council had already organised gender identity awareness training for most of their senior managers as well as the staff working in one leisure centre and decided to organise a 'splash party' for local trans support group members to enjoy the facilities in a safe environment and hopefully break down some of the barriers and or fears they faced in accessing those.

The splash party included having sole use of the swimming pool, gym, sauna, badminton courts for an evening, with staff on hand to assist a large group of trans people and their partners. For many, it was the first time they had been swimming since they had begun their transition.

The Council's work with the local trans group is continuing with a leaflet in production and future splash parties as and when required.

#### *What was the outcome?*

The event was a huge success, the atmosphere was very relaxed and friendly, and it was a very positive experience. Trans people felt more comfortable and safe in accessing the leisure facilities. This in turn is expected to help improve trans people's health, wellbeing and social integration.

### *Community safety/neighbourhood services*

The provision of community safety/neighbourhood services is relevant to trans people as many experience anti-social behaviour or hate crime. Section 17 of the Crime and Disorder Act requires local authorities in England and Wales to consider crime and disorder reduction and community safety when carrying out all service delivery and duties. Local authorities in Scotland promote safer communities through local community safety partnerships.

The Equalities Review research found that 46% of trans people had experienced harassment in their neighbourhoods and that 73% had experienced some form of harassment in public. Hate crime research has found that nearly a third of hate crimes occur outside the victim's home and 20% of incidents involve neighbours.<sup>23</sup>

Transphobic hate crime is now one of the five 'strands' of hate crime recorded by the police – but often trans people are reluctant to report it. This may be because of previous bad experiences with the police or because they fear reprisals by neighbours and that the criminal justice process will 'out' them as trans (see Chapter 6). Anti-social behaviour officers need to be alert to the possibility of victimisation of a person because of their trans status.

### **Good practice example 2: Improving trans community safety and encouraging hate crime reporting**

#### *What was done?*

A community safety partnership and an housing association in a rural area of England provided funding for a hate crime project for three years. Actions included setting up several third-party reporting agencies led by a coordinator offering victims a separate place to report including the option of requesting no police involvement. There was an online reporting facility set up on the council website as well as training on hate crime awareness for staff within the council – including at the civic centre reception.

#### *What was the outcome?*

Local people including trans people were able to discuss issues with the hate crime coordinator in confidence while visiting the council on other business.

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<sup>23</sup> Iganski, P. 2008 'Hate Crime' and the City, Bristol: The Policy Press

Hate crime reporting for transphobic and homophobic hate crime increased by 39% and race hate crime by 49%.

Following the success of the project, the hate crime coordinator position is now permanent within the council.

### *Housing and homelessness services*

Housing is a particular issue for trans people because some experience family breakdown and/or victimisation by neighbours when they undergo gender reassignment.

The Equalities Review research found that 46% of trans people had experienced family breakdown due to their gender identity and 28% had moved to a different area because of their gender reassignment.

Housing services need to regard trans people as vulnerable for the purpose of homeless applications or for relocation, if they are experiencing abuse and harassment where they live. Young trans people in particular may experience homelessness after rejection from the family home due to their gender identity or fleeing from domestic abuse as a result of their gender identity.

Due to the very small number of trans community support groups and NHS Gender Identity Clinics, trans people of all ages may move to larger cities to access specific support. It is good practice to take into account the need to access specific support when considering whether a trans person has sufficient local connections to have their homeless application accepted by a particular council.

### **Good practice example 3: Trans equality within homeless accommodation procedures**

#### *What was done?*

A council in a large urban area of Scotland received a request for emergency homeless accommodation from a young trans man who had previously been resident in a rural council. They needed to carry out an assessment of his circumstances to determine whether he should be regarded as priority homeless and eligible for assistance from the council rather than from the one covering the location where he had previously been resident.

While they were carrying out the assessment, the Homeless Team provided him with temporary emergency hostel accommodation. The Team adopted a human rights approach to the trans man's predicament, checking with him how best to ensure his safety and dignity within the various homeless accommodation options available as well as having due regard to the potential of possible harassment because of his trans status. He was smoothly integrated into a single room at a small male hostel which had a constant staff presence. After obtaining his permission, his key worker at the hostel and the hostel manager were discreetly informed about his potential vulnerability as a mid-transition trans man and the importance of maintaining his confidentiality in regard to other staff and hostel service users was highlighted. His homeless service case worker had previously received training on LGBT housing equality issues and was aware of the importance of being sensitive when asking questions about his housing history. She gradually established through their conversations that he had ended up homeless as a result of fleeing transphobic harassment from neighbours and also family members. She assisted him to access mental health services as he was experiencing severe depression and panic attacks.

A letter of support was accepted from a LGBT equality organisation as evidence of his need to stay in the city in order to access a trans community support group and also trans-knowledgeable mental health services.

*What was the outcome?*

The council accepted him as priority homeless and acknowledged that he was too vulnerable to be placed in accommodation where high-risk offenders were. He eventually moved permanently into a small city-centre bedsit. He has not experienced any further harassment and he is now well integrated socially and his mental health is improving.

*Changing records*

The change of name and gender on all records is a central part of the gender reassignment process. This will include for example council tax, benefits, voter registration or housing records.

Research for the Equalities Review found that many trans people experienced difficulties when requesting changes of details on records. Many authorities have no set procedure for making changes and/or staff lack the appropriate knowledge regarding what changes can lawfully be made.

Good practice is for public authorities to change name, title and gender on first request from a service user who simply provides a formal change of name document such as a deed poll or a statutory declaration. Trans service users do not have to present any evidence of any medical treatment nor a Gender Recognition Certificate to request for this to be done.

#### **Good practice example 4: Improving the procedure to change trans people's records**

##### *What could be done?*

A local authority could design a simple procedure for its administration staff to be clear as to:

- When to change a service user's name, title and gender emphasising that only a formal written notification from the service user or a statutory declaration<sup>24</sup> is required to do so (not a Gender Recognition Certificate or any proof of medical treatment).
- How to proceed to ensure all records/databases held by the local authority are updated at the same time.

The procedure could also include a standard template response letter for administration staff to confirm that the requested changes have been carried out. Once staff have been trained on the new procedure, a short webpage could then be placed on the local authority's website to provide relevant information to trans service users or potential users.

##### *What could be the outcome?*

Both staff and service users are likely to find the process less embarrassing and stressful as it will be clearer what should be done. Staff should be able to process name, title and gender changes in records much faster and with fewer errors and thus allow greater data accuracy within local government records. The local authority will be less likely to face complaints from trans people for violation of section 22 of the Gender Recognition Act 2004 or the Data Protection Act. The privacy and dignity of trans people will be respected by enabling all records to be updated at once. Trans users and potential users will feel more confident using the local authority services.

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<sup>24</sup> See <http://www.equalityhumanrights.com/your-rights/transgender/trans-people-your-right-to-change-your-name/> for more details on the statutory declaration process

### 4.3 Additional examples of good practice

#### **Good practice example 5: Consulting with the trans community and the impact on service provision**

##### *What was done?*

A council in a large urban area of England organised a consultation event with trans stakeholders on the gender equality scheme. The council's trans equality champion got in touch with a local trans person who had contact with local trans groups and sent out an invitation for them to attend an event in a 'LGBT friendly' venue in the city.

##### *What was the outcome?*

The consultation helped the council identify actions to undertake as part of their gender equality scheme action plan in order to provide better services to trans people. These were:

- Funding was provided for a local group to research experiences of transphobic hate crime which will feed into actions for the Crime and Disorder Partnership.
- The local police also consulted with the group on their experiences and concerns regarding their service, thus building a relationship of trust with the community and the police.
- Awareness training on trans issues was arranged for staff working in housing services so that they can deal more effectively with trans people's housing needs.

#### **Good practice example 6: Embedding trans equality within training programmes for local government staff**

##### *What was done?*

As part of their work on the gender equality duty, Wrexham County Borough Council in Wales engaged with a local trans group and embedded staff training on trans issues within their existing staff training structures. The training delivery takes the form of two 'Transgender Awareness' events per year open to all staff and Elected Members as part of a programme of 'lunch and learn' short sessions. More detailed sessions are provided on request to departments and teams. In addition, trans awareness is embedded within the wider gender equality training.

##### *What was the outcome?*

The training has enabled a wide range of local government staff,



including social workers, housing officers and administrators, to become more comfortable and skilled in assisting trans service users. The knowledge gained through the training, and the inclusion of trans as a strand within their equality impact assessment toolkit, has assisted the Council in mainstreaming trans equality within a range of policies.

Trans people are able to use the Council's services with greater confidence and they are more likely to have their needs met appropriately.

## Chapter 5: Education service provision

This section will provide you with:

- A summary of the law in relation to the provision of education services to trans people to ensure providers are clear on what they are required to do.
- An overview of how education service provision can impact on trans people.
- Key issues and good practice examples.

### 5.1 Legislation relevant to trans people in the education sector

#### *Equality legislation*

Since 1999 it has been unlawful to discriminate on the grounds of gender reassignment in vocational training. Vocational training includes further education (FE) and higher education (HE).

The Equality Act 2010 which came into force in April 2010 introduced the gender equality duty. This places an obligation on public authorities to pay due regard to the need to address and eliminate the unlawful discrimination and harassment of transsexual people in employment, related fields and vocational training (including further and higher education) and in the provision of goods, facilities and services since April 2010.<sup>25</sup>

The Equality Bill will prohibit discrimination on the grounds of gender reassignment in schools and will require schools to:

- Advance equality of opportunity by introducing a new definition of 'gender reassignment' which will no longer require for the process to be carried out under medical supervision in order to be covered by anti-discrimination law.
- Provide protection to people who face discrimination because they are perceived to be transsexual by others or because of their association with transsexual people, for example, as their partner or their children.

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<sup>25</sup> The Sex Discrimination (Amendment of Legislation) Regulations 2010 came into force on 6 April 2010 and fulfil the UK Government's obligation to implement the Directive 2004/113/EC which was already in force elsewhere in Europe. The regulations amend the Sex Discrimination Act (SDA) to make it unlawful to discriminate against transsexual people or those who '*intend to undergo, is undergoing or has undergone gender reassignment*' in the provision of goods, facilities or services

### *Human Rights Act*

All public authorities including schools, further and higher education institutions are covered by the Human Rights Act and therefore need to be proactive in ensuring that the services they provide follow the principles of fairness, respect, equality, dignity and autonomy underpinned by the Act for all people including trans students of all ages and regardless of whether or not they intend to undergo, are undergoing or have undergone gender reassignment.

In the spirit of the Act, schools, further and higher education institutions should therefore ensure that their policies and practices respond to the needs of young trans people and do not discriminate against them. In order to achieve this, the Commission would recommend for all education service providers to consider fully young trans people's needs as part of the work they do to comply with the gender equality general and specific duties.

This section has been written in the spirit of best practice which has a positive impact on the lives of young trans people. Indeed at the end of this section, you will find several real-life examples which show clearly how education service providers have used the equality duties/human rights obligations to enable young trans people to succeed in education and make the most of their life chances.

### *How can education service provision impact on trans people?*

Trans people will have accessed education services at some point in their lives. Many will have been aware as children and young people in school education that their gender identity differed in some way from their birth sex, although few will have felt able to explain this to others until older. In addition, some trans people may decide to return to further or higher education at the time of beginning gender reassignment in order to retrain for a fresh start in a different career.

Trans people may face problems in a number of areas of education service provision. Particular issues include:

- Single-sex services and facilities, especially those which require people to share living, changing or sleeping spaces, for example:
  - boarding school dormitory facilities
  - single-sex student halls of residence
  - physical education changing and showering facilities, and
  - toilets within schools, colleges and universities.

- School uniforms which are specific for boys and girls, for example:
  - girls must wear skirts
  - Records which may hold personal information regarding a trans person's previous name and gender, for example:
    - learner records
    - student union societies, and
    - alumni organisations.
- Documents which specify the recipient's name and require to be re-issued if the recipient undergoes gender reassignment, for example:
  - student matriculation cards, and
  - education qualification certificates and examination results transcripts.

## 5.2 Key issues and good practice examples

### *Transphobic bullying*

The Equality and Human Rights Commission Trans Research Review published in Autumn 2009 reported that:

- A higher percentage of trans people experience bullying at school (75%) than lesbian, gay and bisexual (LGB) people (25%).
- 64% of trans men (born female) and 44% of trans women (born male) had experienced bullying at school from fellow pupils as well as staff.
- There may be links between homophobic and transphobic bullying in schools since often the bullying is sparked by expressing behaviours that are seen as breaking gender norms rather than sexual orientation. As such, addressing homophobic bullying in schools may also help challenge transphobic bullying.

Research conducted by the Equality Challenge Unit (ECU)<sup>26</sup> in 2009 suggests that trans students encountered higher levels of negative treatment than LGB students, and disturbingly high levels of threatening behaviour, physical abuse and sexual abuse – particularly from other students. In particular the ECU survey reported that of the trans student respondents:

- 22.6% have been bullied or discriminated against since starting university.

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<sup>26</sup> Equality Challenge Unit 2009 'The experience of lesbian, gay, bisexual and trans staff and students in higher education'

- 17.2% have been made to feel uncomfortable in class by lecturers and other students in group work.
- The ECU also suggested that such accounts perhaps contribute to explaining why 28.5% of trans students have taken time out of their course which is higher than the national average, and suggest a need for the sector to provide more formal support for LGBT students, and training for higher education institution staff about the need to be sensitive to the types of issue that may affect LGBT students' academic performance.

### **Good practice example 1: Supporting a young trans person in primary school through adopting a human rights approach**

#### *What was done?*

A young trans person born female attending a mixed-sex primary school was refusing to answer to a female name, refusing to wear skirts, repeatedly standing in line with the boys rather than with the girls and aggressively insisting she was really a boy. At school the pupil displayed anxiety and emotional distress. The school and the child's parents agreed to seek support from an educational psychologist and from the local authority's specialist educational inclusion officer who had already been carrying out significant equality work in partnership with a LGBT youth organisation.

The psychologist identified the child as transgender and referred him to the UK specialist child and adolescent gender identity clinic in London. The clinic provided support not only to the child but to the whole family. The gender identity clinic and the LGBT youth service provided in-depth information and training to the local authority specialist educational inclusion officer who in turn assisted the school to review its procedures to enable the child to remain in school.

A special educational need statement was developed for the child. The child was allowed to pick a gender-neutral nickname which was used by teachers and other school pupils, the uniform rules were relaxed to enable gender-neutral clothing and the school implemented across all classes a new system of lining up for class by mixed-sex sub-groups labelled using basic shapes (such as Triangles, Circles and Rectangles) rather than by gender. Teachers dealt with questions from other pupils by using existing teaching resource exploring gender stereotypes and emphasising that everyone is different but everyone deserves equal respect.

*What was the outcome?*

The child's social integration with other school pupils increased and the child ceased to display school anxiety and distress. Classes were no longer disrupted by the child refusing to comply with requests from teachers. Instead the child started enjoying learning and felt included.

The school, the child's parents and the gender identity clinic are already working together to prepare the secondary school so that a smooth transfer can take place in a couple of years. The child's statement of educational need is anticipated to change significantly upon reaching puberty at which point it is likely to become clearer whether or not the child will undergo gender reassignment.

*Accommodation and single-sex facilities*

Trans people frequently face unnecessary problems regarding single-sex accommodation and single-sex facilities.

Research conducted by the Equality Challenge Unit suggests that some trans students may not feel comfortable in single-sex accommodation where there are communal showering facilities. This is an issue that arises particularly for first-year students because most have little or no choice about the accommodation to which they are allocated, whereas students in subsequent academic years can potentially choose where, and with whom, they live.

Public authorities should consult with their trans service users as to which accommodation and facilities they feel most comfortable to use and ensure that they are given the ultimate choice in such matters. Doing so should enable young trans people feel more confident in deciding to pursue further or higher education and participate fully in student activities.

**Good practice example 2: Responding to trans people needs by making university toilet facilities more inclusive**

*What was done?*

Manchester Metropolitan University Student Union received several requests from trans students with regard to adapting their facilities in order to make them more welcoming for people who were either in the early stages of gender reassignment, looked ambiguous or identified as androgynous.

As a result, the Union decided to provide some ‘unisex’ toilet facilities. Notices were put on the wall near the unisex toilets advising users that the facilities were unisex and indicating to those who preferred to use gender-specific facilities where they were.

*What was the outcome?*

All trans and androgynous people in the early stages of gender reassignment felt much more comfortable and more welcomed using the Union’s building. Subsequently more trans people used the Student Union building and are thus more integrated with Student Union activities.

*Dress codes and uniform*

Uniform is a key issue for young trans people at schools. Many schools have strict uniform codes where boys and girls are required to wear particular clothes – for example, girls cannot wear trousers.

Research for the Equalities Review found that pupils born female with gender dysphoria experienced great discomfort being forced to wear stereotypical girls’ clothes – for example a skirt.

Requiring pupils to wear gender-specific clothes is potentially unlawful.<sup>27</sup> Moreover, failure for schools to address issues such as this in a sensitive way could lead to high levels of absenteeism, poor performance and low levels of academic achievement.

**Good practice example 3: Supporting a young trans person in sixth-form college through adopting a human rights approach**

*What was done?*

A young trans person born female was excluded from school for refusing to wear a skirt and insisting on wearing a shirt and tie (breaching the school uniform policy).

A local sixth-form college was contacted by a trans organisation which was helping the young person and they agreed to allow him to enrol. The college staff firstly underwent trans awareness training based around key human rights principles such as dignity, privacy, fairness and respect which helped them to support the young trans person

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<sup>27</sup> See <http://www.equalityhumanrights.com/advice-and-guidance/education-and-training-providers/fair-treatment-when-in-education/equal-opportunities/>

appropriately and to explain the situation to other learners sensibly in order to avoid any risk of transphobic harassment.

*What was the outcome?*

At the college the learner was called by his preferred male name. Any teasing by other learners was dealt with promptly by staff. He felt integrated and accepted by his peers. He left with good grades, underwent gender reassignment and is now a doctor.

*Name changes and certificates*

Many trans people experience problems with organisations and institutions refusing to change their name and gender on records when beginning gender reassignment treatment. In addition, during or after transitioning, trans people may request an educational institution to change the name on their certificates.

Some institutions refuse to do this, leaving a trans person in a situation where they are at risk of disclosing their previous gender when applying for a job by producing a certificate in their previous name.

**Good practice example 4: Issuing student certificates after change of name**

*What was done?*

Lancaster University found that students who had gained certificates before undergoing gender reassignment were experiencing problems seeking employment as their certificates did not correspond to their new identity. The head of the student registry understood the negative impact this had on trans people's lives and as a result decided to write a policy to ensure staff had clear instructions on how to re-issue certificates for students who had undergone gender reassignment.

*What was the outcome?*

Students who have undergone gender reassignment can request for their certificate to be re-issued in their new name by producing a change of name document and a doctor's letter to confirm their new identity. Because staff are clear on what to do, the certificates are re-issued promptly and without intrusive questioning. Ultimately, this allows trans people to maintain their privacy when applying for jobs.



## Chapter 6: Trans people in the criminal justice system

This section will provide you with:

- An overview of how the criminal justice service provision can impact on trans people.
- Key issues and good practice examples.
- Additional examples of good practice by criminal justice agencies in using the gender equality duty and Human Rights Act to improve service delivery and achieve better outcomes for trans people.

### 6.1 What elements of the criminal justice system can impact on trans people?

Trans people may come into contact with the criminal justice system as victims of crime (in particular, hate crime), witnesses or as suspects or offenders.

UK research indicates that around 62% to 73% of trans people have experienced harassment or violence because they were identified as trans. This included verbal abuse, threatening behaviour, physical assault and sexual assault. Poorer trans people were more likely to experience violence.<sup>28</sup> Some research<sup>29</sup> also suggests that trans people are over-represented in prisons but it is not clear why.<sup>30</sup>

Victims, witnesses, suspects or offenders may come into contact with the:

- Police.
- Courts.
- Crown Prosecution Service or the Crown Office and Procurator Fiscal in Scotland.
- Prison Service.
- Probation Service or Criminal Justice Social Work Services in Scotland.

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<sup>28</sup> See Equality and Human Rights Commission Trans Research Review, 2009. Available at [http://www.equalityhumanrights.com/uploaded\\_files/research/trans\\_research\\_review\\_rep27.pdf](http://www.equalityhumanrights.com/uploaded_files/research/trans_research_review_rep27.pdf)

<sup>29</sup> Poole et al. 2002. 'Working with Transgendered and Transsexual People as Offenders in the Probation Service'. *Probation Journal* 49: 227-232

<sup>30</sup> As stated in the Commission Trans Research Review, Poole et al. (2002) suggest that this may be related to trans people stealing money for surgery, although there is no research evidence to support this assertion

All criminal justice agencies need to ensure that they consider the needs of trans people regardless of whether they are victims, witnesses or a perpetrator of crime.

It would be particularly important for criminal justice agencies to ensure that their policies and practices comply with their equality and human rights obligations with regard to:

- Addressing trans people appropriately to ensure that it is always done using people's acquired or preferred gender, for example ensuring that police officers taking witness statements have clear guidelines on how best to address a person who is ambiguously gendered.
- Communicating with others in relation to a case involving trans people to ensure that their right to privacy is maintained at all times, for example when considering disclosing information to other criminal justice agencies, when communicating with family members and employers, when reporting a case to the media, or when talking to other prisoners.
- Searching trans people in a dignified way, for example if it is possible, to accommodate the detainee's request to be searched by an officer of their choice.
- Facilitating for trans people to continue or start the gender reassignment process, for example allowing trans people to attend court in appropriately gendered dress without comment, ensuring prompt access to medical services to maintain continuity of gender reassignment treatment.
- Housing trans suspects or offenders to ensure that they are not put at risk of transphobic hate crime and that their right to privacy is maintained at all times, for example ensuring that trans people are placed in a bail hostel facility appropriate to their gender role or allowing personal bodily privacy when showering for those serving a custodial sentence, while avoiding their complete isolation.

## **6.2 Key issues and good practice examples**

### *Trans people as victim or witness of crime*

As the Equality and Human Rights Commission Trans Research Review highlights, despite the research suggesting that a high proportion of trans people experience hate crime, much of it may go unreported. Underreporting seems to arise from a lack of trust in police or from the fear that pursuing a prosecution may necessitate the disclosure of one's gender identity, which may have negative consequences.

One of the main issues faced by trans people when interacting with the police as victims or witnesses of crime relates to disclosing their previous name as it also discloses their previous gender. It is important for police forces to have clear guidelines on how to do this in a sensitive way, for example by ensuring that such questions are not asked in public.

Police forces also need to consider the need to have clear policies in place with regard to addressing trans people, particularly those trans people who look ambiguously gendered. For example, police officers could use the same approach as the one adopted by the tribunals phone line services.

### **Good practice example 1: Making the Tribunal phone line service trans-friendly**

#### *What was done?*

Staff at the tribunals phone line service received training from Press for Change, an organisation which represents trans people's interests and provides training to public authorities' staff. Part of the training involved resolving issues with regard to identifying tactfully the acquired or preferred gender of trans people who might phone the service to make enquiries about the gender recognition process. All staff have been trained to ask the person's name prior to asking for their title (Mr, Mrs or Ms), which is the same advice given to staff when faced with a name, often of a non-English origin, which they are uncertain of.

#### *What was the outcome?*

Staff at the tribunals phone line are more confident when dealing with calls from trans people. Trans people using the phone line are more confident that communications with staff will not be embarrassing or offensive.

The concerns that trans people have regarding privacy and dignity are heightened further if involved as witnesses or victims of crime in the prosecution process. For example, many will simply not report that they have been victims of transphobic hate crime as the nature of the crime would involve outing themselves as trans. If they are living permanently in their preferred gender role, they may well be afraid of their neighbours, employer, faith community or others discovering they are trans. If they are not living permanently in their preferred gender role and

have not disclosed their status to their partners, spouses or employer, they may be afraid of losing their home, their marriage or their job.

Trans people can also feel particularly vulnerable in appearing in court as witnesses or victims of crime. Some fear that this might place them at risk of future harassment and discrimination from others in their community (from the local journalists to their neighbours or employers). Others, particularly those who appear in court as victims of trans hate crime might fear reprisals from their attacker and/or associates.

To assist with fair treatment, the interests of justice and the best quality of evidence, prosecutors increasingly are using special measures and courts are placing reporting restrictions on disclosure of name and personal details of trans people in court.

### **Good practice example 2: Ensuring privacy protection to enable the effective prosecution of transphobic hate crime**

#### *What was done?*

A trans woman who was a victim of transphobic hate crime agreed to press charges. However, after being told that her name and address would have to be disclosed to the defence, which she regarded as a serious threat to her personal safety, she refused to do so.

The Crown Prosecution Service (CPS) worked with the trans woman and a process was agreed whereby her case could proceed with her name and address withheld to insure the trans woman safety. A conviction was obtained and the case was written up under the assumed name of Heather Williams. This case was used as good practice example in guidance published by the CPS in October 2008 entitled 'Homophobic & Transphobic Crime Toolkit: Good Practice & Lessons Learnt,<sup>31</sup>' which forms part of their series of guidance dealing with homophobic and transphobic hate crime.

#### *What was the outcome?*

Prosecutors now have easy access to a guide which advises them on how to address the issues raised in transphobic hate crime cases whether or not people involved as victims or witnesses or such crime hold Gender Recognition Certificates. This will lead to increased confidence for prosecutors dealing with transphobic hate crime.

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<sup>31</sup> See Appendix 1 for this document full reference

This may lead to increased successful prosecution of transphobic hate crime and thus increased confidence in the trans community including those people who do not hold a Gender Recognition Certificate of the criminal justice process.

Trans people may also fear that officers in the criminal justice system and in the judiciary may be unsympathetic to their personal circumstances and regard them as responsible for experiencing transphobic hate crime, that is: 'you have caused the problem because you are a trans person'. It is important for public authorities to find ways to build trust among their local trans community. In recent years, many police forces in Great Britain have engaged with their local trans community to this effect – for example by involving trans people in independent advisory groups.

### **Good practice example 3: Carrying out in-depth procedural reviews to ensure services are delivered to trans people appropriately**

#### *What was done?*

North Wales Police has an independent advisory group. The group advises the police on trans issues, hate crime and in picking up any common themes or trends.

A trans member of the independent advisory group in 2009 did a full review of student officer training. They sat in on parts of the training over nine weeks and advised on how best to cover diversity including trans in the diversity element of the student officers' training.

The force also sits on a hate crime panel managed by the Crown Prosecution Service which reviews four to five hate crime cases from start to finish looking at the whole process. Trans hate crime cases are included in this review.

#### *What was the outcome?*

By regularly reviewing in detail how their systems and procedures address trans equality needs, North Wales Police are better able to select the most appropriate ways of implementing trans equality initiatives and to monitor trans equality progress in their service provision. Trans people should receive a better service from police who are familiar with and aware of trans issues.

### *Trans people as suspects or offenders*

Trans suspects and offenders also experience issues within the criminal justice system. These range from not being housed in the appropriate prisons in terms of gender, which can greatly affect their personal safety, to experiencing breaches of their basic rights to privacy and dignity.

A trans person who is arrested and put into custody whether in a police station or a remand unit will be extremely anxious about being searched by an officer of the wrong gender (for example a trans woman whose preferred or acquired gender is female being searched by a male officer) or one who is uncomfortable with being in close contact with a trans person. To avoid such issues, police and prison officers should follow clear guidelines on how to search trans people.

#### **Good practice example 4: Consulting with the trans community on policies and practices**

##### *What was done?*

Lancashire Police formed a stakeholder group to consult on elements of the police service which impacted on trans people. They drew upon trans members of their own independent advisory group, local campaigners as well as those who worked in local government, the healthcare sector and local employee networks. This group met quarterly over a year to assess the impact of the police force policy and practices on trans service users.

The group identified that the procedure to deal with people in custody including searching could have a potential adverse impact on trans and rewrote it. The new guidelines detail how to address a trans person appropriately and how to search trans detainees to comply with the Police and Criminal Evidence Act (PACE) code while maintaining the dignity of trans suspects or offenders. For example, making a record that the trans person has been searched by an officer of their choice and that officer has agreed to do so.

Independent custody visitors and student police officers were given training sessions by members of the consultation group on the appropriate procedure to deal with trans people as victims, suspects or offenders.

##### *What was the outcome?*

The policies brought in clarity by introducing new procedures for the searching and custody of trans people.

Custody and police officers feel more confident in doing their job appropriately with trans people.

The consultation process instilled more confidence in the Lancashire police among the local trans community.

The police force also benefited from having 'critical friends' in the trans community to talk through any new issues arising in their daily jobs.

On being placed on remand, or being convicted trans prisoners who have not taken with them any medication and a note from their doctor about their need for their hormone therapy may find that they have to wait several days without their hormone therapy before an appointment. Similarly those who do not disclose their trans status and their hormone therapy or surgery dates will find that appropriate information, including details of ongoing medication, does not follow them into the system at the start of their sentence, and consequently problems regarding housing and other issues will arise.

Probation officers in England and Wales must prepare a post-sentence report to highlight any special needs that offenders may have, such as those associated with undergoing gender reassignment. Criminal Justice Social Workers in Scotland should also carry out post-sentence court social work interviews to identify urgent needs.

### **Good practice example 5: Offering an advice sheet to allow discreet disclosure of medical requirements for trans prisoners**

#### *What was done?*

A probation area in England prepared an advice sheet for clients facing custody. This advised clients to disclose any important medical history, and details of their current medication in their pre-sentence report. Among a list of relevant medical matters including cancer, being a stoma bag user, or having a disability, they included trans status.

#### *What was the outcome?*

Trans people are more aware of their basic rights in custody and can prepare in the event of being given a custodial sentence.

There may be particular issues for trans people in prisons. As research suggests,<sup>32</sup> trans prisoners who are pre-gender reassignment will almost certainly be incarcerated with people from their natal sex, and this may make it extremely difficult to continue living as their chosen gender. If they do attempt to, they make themselves vulnerable to bullying, sexual assault and violence. Furthermore, those receiving hormone therapy will be likely to have their treatment stopped, at least in the short term.

In order to avoid such issues, a recent court case<sup>33</sup> suggests that the prison service in England, Wales and Scotland must consider how best to house trans prisoners to ensure that the establishment they are placed in is suitable for their particular gender identity. For similar reasons, the probation service should also consider how best to house trans people released on parole and ensure that they are placed in a facility of appropriate gender role.

Prison officers should also note that:

- Putting trans people in solitary should never be considered as a reasonable option to ensure their personal safety. In effect, human rights law would consider such approach as double punishment without cause, which exists solely because the prisoner's trans status is inherently seen as a problem.
- It is not appropriate to disclose a person's trans status to others in custody as it could put this person at risk of violence.

Stephens and Whittle<sup>34</sup> attempted in 2001 to map out the needs of trans suspects and offenders within the criminal justice system. The tables they produced could be used as a starting point by criminal justice agencies in England, Scotland and Wales to assess the impact of their policies and practices on trans people.<sup>35</sup>

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<sup>32</sup> See Stephens, P. and Whittle, S., 2001, A Pilot Study of Provision For Transsexual and Transgender People in The Criminal Justice System, and the Information Needs of their Probation Officers. Report for the Home Office Research Directorate, Available at <http://www.pfc.org.uk/node/384>

<sup>33</sup> See AB, R (on the application of) v Secretary of State for Justice & Anor [2009] EWHC 2220

<sup>34</sup> See Appendix for reference

<sup>35</sup> We would like to clarify to those officers wishing to use such tables to start mapping out the needs of their service users that they should consider that the needs identified in each column to be additional to those in the column to its left



### 6.3 Additional examples of good practice

#### **Good practice example 6: Organising a consultation event between police and a rural trans community**

*What was done?*

Northern Constabulary in Scotland organised a two-day residential community consultation event in partnership with the Scottish Trans Alliance (STA) and the National Trans Police Association (NTPA), called Trans-Inclusive Policing. The main aim of the event was to enable the trans community to be involved in considering strategic objectives of the Force and recommending potential actions for inclusion in the Constabulary's single equality scheme.

The Constabulary built up relationships with its local trans community over 18 months before the event by attending their meetings in the evenings as well as building links with the STA and NTPA. As part of the event trans people also created the content of a 12-minute trans-inclusive policing training DVD to explain how they want police to uphold the dignity and privacy of trans people and to highlight the importance of trans people and their local police service working together to improve trans equality and community safety.

*What was the outcome?*

The full-length internal report from the consultation event enabled the action priorities of the trans community to be fed into Northern Constabulary's single equality scheme.

To provide transparency in the process, the local trans community was encouraged to contribute to and review the draft report, and a summary was also created for wider distribution.

By showing the short DVD to all the Constabulary's employees, awareness was raised about trans human rights good practice and trans inclusion in the Constabulary's equality scheme.

The key consultation findings and the training DVD were shared with other Scottish police forces via the Association of Chief Police Officers Scotland LGBT Community Safety biennial conference.

## **Good practice example 7: Arrangements to include trans people in a prosecution service equality scheme**

### *What was done?*

The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's national prosecution service. It is covered by the Scottish Government's equality schemes but has autonomy in relation to the development and publication of its own equality action plans. In its current action plan, COPFS sets out actions under its equality objectives rather than under equality strands; for example, Engaging with Communities. Under this equality objective there are specific actions for COPFS Area Diversity Teams to consider the best ways of establishing and maintaining contacts with trans groups in the 11 geographic areas in which the organisation operates. The purpose is to expand knowledge of the different needs of trans people.

COPFS has a policy on engaging with trans people in dealing with their case and at court. This policy covers witnesses and accused and focuses on language used by court practitioners, different trans terms, the challenges facing trans people and current legislation.

In preparation for the impending implementation of Scottish legislation recognising transphobic hate crime, COPFS prosecution policy will draw on information provided by trans equality organisations as a baseline for action.

### *What was the outcome?*

The COPFS is currently collecting information on outcomes from the Engaging with Communities equality objective to include in their annual progress report on their equality action plans. They are taking on board feedback from their independent Equality Advisory Group and working to improve on the quantity of outcome-related data on their previous report.

The trans communities in Scotland are more engaged with the service.

Trans people in future will feel more confident with using a prosecution service which is better informed of their needs.

### **Good practice example 8: Translating transphobic hate crime prosecution policy into good practice**

#### *What was done?*

The Crown Prosecution Service national head office developed guidance and a policy document for prosecuting transphobic hate crime in consultation with trans stakeholder groups.

Greater Manchester Crown Prosecution Service's Equality Diversity and Community Engagement Manager took this further by organising training days and 'lunch and learn' sessions for staff on prosecuting transphobic hate crime. Attendees included prosecutors, members of the paralegal team and witness care staff as well as members of the hate crime scrutiny panel. This raised awareness of the key parts of the guidance and policy on prosecuting transphobic hate crime and the issues that trans people face.

#### *What was the outcome?*

All staff members understand better the needs of trans people and feel more confident in dealing with trans service users.

Prosecutors are more informed on how they might get successful outcomes in prosecuting transphobic hate crime, and service users are much more reassured that the crime against them will be pursued vigorously in the courts.

Transphobic hate crime victims will have a more positive experience with a Crown Prosecution Service that better understands their needs, and in future more trans people will be reassured that it is worth reporting hate crime and assisting in its prosecution.

### **Good practice example 9: Leadership on strategic policing and trans issues**

#### *What was done?*

The LGBT champion for the Association of Chief Police Officers of England, Wales and Northern Ireland decided to hold separate meetings for the 'T' element of his portfolio as trans issues would not necessarily be addressed within meetings focusing on LGB issues.

In order to do this, meetings were organised between trans police staff,

equality and diversity representatives from the Metropolitan Police Service, members of the Police Federation, the National Police Improvement Agency, a representative of the Office for Criminal Justice Reform and a representative of a national trans organisation who had knowledge of policing matters.

The group identified codes of practice and guidance which needed to be written and disseminated to all constabularies on policing matters which affect trans people.

*What was the outcome?*

This group provides leadership on trans issues within the police service and supported the formation of the National Trans Police Association – a trans staff network.

So far, the codes of practice and guidance written include a frequently asked questions document on trans people which is available for all forces in England, Wales and Northern Ireland.

In future it will be working on examining the trans content of training courses to ensure that they are comprehensive so that all police constabularies can deliver a service to the trans community which is sensitive to their needs.

**Good practice example 10: Respecting the gender identity and rights of trans prisoners**

*What was done?*

After consulting with trans stakeholders, the governor at a closed women's unit in England facilitated the housing of both trans men and women within the closed women's unit. This has included both pre- and post-genital surgery prisoners of both sexes.

Training was undertaken for both staff and prisoners.

Most of the trans prisoners were allowed to work together on the gardening scheme so allowing periods of social support among themselves.

Arrangements were made for a specialist consultant to visit the unit for a day every three months during which time prisoners were given

appointments and the progress of the gender reassignment treatments proceeded as they would in the outside world – as they should do under the prison medical service as it is now part of the NHS.

Internet access to legitimate online support groups, such as the FTM-UK Yahoo group run by the FTM network was allowed in recreation periods.

Access was enabled for a member of the Gender Trust and the FTM Network to visit and meet prisoners, and facilitate a group support session every three months.

*What was the outcome?*

The trans prisoners felt very respected as compared to other periods of imprisonment which had often been in the equivalent of solitary confinement. Many of them chose to undergo therapy, to use the education services and to train for work which in turn enabled them to better present their cases for release to the parole board.

The human rights of trans women in particular were met by recognising their need to live as women, without fear of danger. Single cells were the norm so enabling them, and the trans men, to better attend to those health or presentation issues which required privacy.

It became easier to ensure the health service needs of all of the trans prisoners. The specialist doctor who visited the prison was able to block book the patients, so reducing their waiting time. It also ensured that they had expert healthcare and gender reassignment assessments if requested.

Prison officers, other staff, and prisoners gained understanding and respect for the rights and needs of trans people.

Of the still-known trans prisoners who were housed in this establishment during this project, none have been further prosecuted for any crime, and all are working.

## **Glossary**

Language can be an emotive issue in the trans community, with different people feeling comfortable with different descriptions and nouns. This glossary captures some of the more commonly used words and provides a guide to acceptable language.

The best way a public authority can ensure it uses respectful language is to ask any trans service users what they consider appropriate.

### **Acquired gender**

The new gender of a person who has had their gender reassigned and/or legally recognised. It is possible for an individual to transition fully without surgical intervention.

### **Gender**

Gender consists of two related aspects: gender identity, which is a person's internal perception and experience of their gender; and gender role, which is the way in which the person lives in society and interacts with others, based on their gender identity.

### **Gender versus sex**

The term 'sex' refers to the biological difference between men and women. The term 'gender' refers to a person's self-perception and role in society which is socially constructed by environment and experiences.

### **Gender presentation / gender expression**

While gender identity is subjective and internal to the individual, the presentation of one's self, either through personality or clothing, is what is perceived by others. Typically, trans people seek to make their gender expression or presentation match their gender identity, rather than their birth sex.

### **Gender reassignment / transitioning**

Altering one's birth sex is not a one-step procedure - it is a complex process that takes place over a long period of time. Gender reassignment or transition includes some or all of the following cultural, legal and medical adjustments: telling one's family, friends, and/or co-workers; dressing in the acquired gender; changing one's name and/or sex on legal documents; hormone therapy, and possibly (though not always) some form of chest and/or genital alteration.

## **LGBT**

Lesbian, gay, bisexual and transgender/transsexual.

### **Trans**

The terms 'trans people' and 'transgender people' are both often used as umbrella terms for people whose gender identity and/or gender expression differs from their birth sex, including transsexual people (those who intend to undergo, are undergoing or have undergone a process of gender reassignment to live permanently in their acquired gender), transvestite/cross-dressing people (those who wear clothing traditionally associated with the other gender either occasionally or more regularly), androgyne/polygender people (those who have non-binary gender identities and do not identify as male or female), and others who define as gender variant.

### **Transgender**

An umbrella term for people whose gender identity and/or gender expression differs from their birth sex. They may or may not seek to undergo gender reassignment hormonal treatment/surgery. Often used interchangeably with trans.

### **Transsexual**

A person who intends to undergo, is undergoing or has undergone gender reassignment (which may or may not involve hormone therapy or surgery).

Transsexual people feel the deep conviction to present themselves in the appearance of the opposite sex. They may change their name and identity to live in the acquired gender. Some take hormones and have cosmetic treatments to alter their appearance and physical characteristics. Some undergo surgery to change their bodies to approximate more closely to their acquired gender.

### **Transvestite or cross-dressing people**

These could be defined as people choosing not to live permanently in one gender. Some transvestite or cross-dressing people will seek medical treatment to fully transition and live permanently in their preferred gender at some point in their life.

It should be noted that **intersex people are different to trans people**. Intersex is a relatively rare medical condition when babies are born with male and female features. These features may be internal and not visible and may not be known of until the person becomes an adult.

Parents of a baby known to be intersex will make a choice, with guidance from medical staff, as to which gender their baby should be raised. A small number of intersex people raised in one gender want to transition to the other gender when they become an adult.

It is important to understand that **gender identity is different from sexual orientation and that the two are not related**. Transsexual people, like any other people, can be gay, lesbian, bisexual or heterosexual.

**Gender Recognition Certificates (GRCs)**. Some trans people may apply for a Gender Recognition Certificate but many prefer not to do so for various reasons. Some organisations may mistakenly believe that they are not supposed to change their records to show a trans person's new name and appropriate title (Mr, Miss, etc) until they have obtained a Gender Recognition Certificate. This is incorrect and in most cases would constitute discrimination. Furthermore, nobody is entitled to see or record the details of a Gender Recognition Certificate. If a public authority needs proof of a trans person's legal gender then only the birth certificate should be requested.

The Gender Recognition Certificate (GRC) exists only for the Gender Recognition Panel to instruct the Registrar of Births to make a new entry in their register, from which a birth certificate can be drawn. The document states clearly that it has no other purpose.

The Gender Recognition Act 2004 defines any information relating to a transsexual person's gender recognition application as 'protected information'. It is a criminal offence, subject to a level 5 punishment which currently is up to £5,000 and/or up to six months in prison, for anyone acquiring this protected information in an 'official capacity' to disclose it to a third party without the transsexual 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.

### **Language**

- The words trans, transgender and transsexual should be used as adjectives, not as nouns. Calling someone 'a transsexual' is often considered to be as rude as calling someone 'a black'.
- Similarly it is not appropriate to add 'ed' at the end of the word transgender – the word transgender is an adjective, not a verb.



- It is not appropriate to use the terms 'sex change' or 'pre/post-operative'. These imply that the process of transition must involve some form of surgery, which is not the case.

It is good practice and respectful to use a trans person's chosen name, not their birth name. They should be afforded the same respect for their chosen name as anyone else who lives by a name other than their birth name.

The Equality and Human Rights Commission recommends public authorities to ask trans people which pronoun they would like you to use. A person who identifies as a certain gender, whether or not they have taken hormones or had surgery, should be referred to using the pronouns appropriate for that gender.

If it is not possible to ask the person which pronoun he or she prefers, use the pronoun that is consistent with the person's appearance and gender expression. For example, if the person wears a dress and uses the name Susan, feminine pronouns are appropriate.

It is never appropriate to put quotation marks around either the trans person's chosen name or the pronoun that reflects their gender identity. Some terms are also considered discriminatory and offensive and should not be used. These include: 'she-male', 'he-she', 'it', 'trannie', 'tranny', and 'gender-bender'.

## **Appendix**

### **Good practice guides**

#### **Health and social care**

Transgender experiences: information and support. Department of Health

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_097169](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_097169)

An introduction to working with transgender people: information for health and social care staff. Department of Health

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_074257](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_074257)

Reducing health inequalities series: trans people's health. Department of Health

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_078349.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_078349.pdf)

Planning for later life: transgender people. Age Concern

<http://www.ageconcern.org.uk/AgeConcern/Documents/IS30TransgenderJan2007.pdf>

Bereavement: a guide for transsexual, transgender people and their loved ones. Department of Health

<http://services.pfc.org.uk/files/Bereavement.pdf>

#### **Education**

Guidance on combating transphobic bullying in schools. Gires

<http://www.gires.org.uk/transbullying.php>

Guidance for schools on preventing and responding to sexist, sexual and transphobic bullying. Department for Children, Schools and Families

<http://tinyurl.com/dcsf-transphobic-bullying>

Guidance on trans equality in post-school education. Unison

[http://www.lluk.org/documents/transgender\\_guidance.pdf](http://www.lluk.org/documents/transgender_guidance.pdf)

Trans Equality toolkit for Further Education Colleges. Centre for Excellence in Leadership/Press for Change  
[http://services.pfc.org.uk/files/CEL\\_toolkit.pdf](http://services.pfc.org.uk/files/CEL_toolkit.pdf)

Trans Staff and Students in Higher Education. Equality Challenge Unit  
<http://www.ecu.ac.uk/publications/trans-staff-and-students-in-he>

## **Local government**

Improving policy and practice for LGBT people: guidance for local authorities. Scottish Executive  
<http://www.scotland.gov.uk/Resource/Doc/90351/0021753.pdf>

Use of sports and leisure facilities by trans people. Press for Change  
<http://www.pfc.org.uk/files/campaign/pfcsprt01.pdf>

Transsexual people and sport: guidance for sporting bodies. Department for Culture, Media and Sport  
[http://www.pfc.org.uk/files/DCMS\\_Guidance-Transsexual\\_People\\_and\\_Sport.pdf](http://www.pfc.org.uk/files/DCMS_Guidance-Transsexual_People_and_Sport.pdf)

Out on my own: understanding the experiences and needs of homeless lesbian, gay, bisexual and transgender youth. University of Brighton  
<http://www.communities.gov.uk/documents/housing/pdf/outonmyown.pdf>

## **Criminal justice**

Policy for prosecuting cases of homophobic and transphobic crime. Crown Prosecution Service  
[http://www.cps.gov.uk/Publications/docs/htc\\_policy.pdf](http://www.cps.gov.uk/Publications/docs/htc_policy.pdf)

Guidance on prosecuting cases of homophobic and transphobic crime. Crown Prosecution Service  
[http://www.cps.gov.uk/Publications/docs/htc\\_guidance.pdf](http://www.cps.gov.uk/Publications/docs/htc_guidance.pdf)

Homophobic and transphobic crime toolkit: good practice and lessons learnt. Crown Prosecution Service  
[http://www.cps.gov.uk/publications/prosecution/htc\\_toolkit.html](http://www.cps.gov.uk/publications/prosecution/htc_toolkit.html)

# Contacts

## England

Equality and Human Rights Commission Helpline  
FREEPOST RRL- GHUX-CTR  
Arndale House, Arndale Centre, Manchester M4 3AQ

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Fax 0845 604 6630

## Scotland

Equality and Human Rights Commission Helpline  
FREEPOST RSAB-YJEJ-EXUJ  
The Optima Building, 58 Robertson Street, Glasgow G2 8DU

Main number 0845 604 5510  
Textphone 0845 604 5520  
Fax 0845 604 5530

## Wales

Equality and Human Rights Commission Helpline  
FREEPOST RRLR-UEYB-UYZL  
3rd Floor, 3 Callaghan Square, Cardiff CF10 5BT

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Fax 0845 604 8830

## Helpline opening times:

Monday to Friday: 8am – 6pm

Calls from BT landlines are charged at local rates, but calls from mobiles and other providers may vary.

Calls may be monitored for training and quality purposes.

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**[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**