



Policy name: The Care and Management of Individuals who are Transgender

Reference: N/A

Re-Issue Date: 27 February 2023

Implementation Date: 31 October 2019

Prior to the implementation date of 31st October 2019, the following key areas will come in to force as stated:

- **01 August 2019:** Initial Local Case Board to be held within 14 days (paragraphs 4.21 to 4.24). This replaces any reference to 3 working days in the existing PSI (17/2016/PI 16/2017).
- **01 August 2019:** To complete the disclosure form prior to any Local or Complex Case Board, as set out in paragraphs 4.30 to 4.34 and Annex C. To be shared with the individual at least four days prior to a Case Board.
- **01 September 2019:** All Pre-Sentence Local Case Boards to be chaired by an operational prison manager band 8 or higher as stated in paragraphs 4.41. This replaces paragraph 7.4 in the existing PSI (17/2016/PI 16/2017).
- **01 September 2019:** Complex Case Board process is to be introduced for Probation Approved Premise allocation, as stated in paragraphs 4.45 to 4.51. This replaces paragraphs 7.8 - 7.9 in the existing PSI (17/2016/PI 16/2017).

Replaces the following documents (e.g. PSIs, PSOs, Custodial Service Specs) which are hereby cancelled: PSI 17/2016 and PI 16/2016 The Care and Management of Transgender Offenders.

Introduces amendments to the following documents: N/A

Action required by:

<input checked="" type="checkbox"/>	HMPPS HQ	<input checked="" type="checkbox"/>	Governors
<input checked="" type="checkbox"/>	Public Sector Prisons	<input checked="" type="checkbox"/>	Heads of Group
<input checked="" type="checkbox"/>	Contracted Prisons	<input checked="" type="checkbox"/>	Contract Managers in Probation Trusts
<input checked="" type="checkbox"/>	Probation Service	<input checked="" type="checkbox"/>	HMPPS-run Immigration Removal Centres (IRCs)
<input checked="" type="checkbox"/>	HMPPS Rehabilitation Contract Services Team	<input checked="" type="checkbox"/>	Under 18 Young Offender Institutions
<input checked="" type="checkbox"/>	Other providers of Probation and Community Services		

Mandatory Actions: All groups referenced above must adhere to the Requirements section of this Policy Framework, which contains all mandatory actions.

For Information: The aim of this Policy Framework is to detail the minimum mandatory requirements which are needed to care for and manage individuals who are transgender.

In doing this, there is an emphasis on adopting an approach which considers the safety and needs of those who are transgender, whilst ensuring that decisions do not negatively impact on the well-being and safety of others, particularly in custodial settings such as in women's prisons.

Governors, Probation Directors and all providers of services on behalf of HMPPS must ensure that any new policies developed because of this Policy Framework are compliant with the relevant legislation including the Public Sector Equality Duty (Equality Act 2010).

Associated Documents: These are referenced in the body of the Framework.

Audit/monitoring: Public Prisons – Prison Group Directors will monitor compliance of the requirements set out within the framework in their prisons.
Privately Managed Prisons - Monitoring of compliance will be through the standard contract management processes.

Providers of Probation Services – compliance is monitored by Regional Probation Directors (RPDs) in their region and by senior contract managers.

Quality assurance is provided by the HMPPS Operation & System Assurance Group.

An annual data collection exercise by MOJ Analytical Services is completed each year to inform the HMPPS Annual Equalities Offenders report published in November. Alongside this, a qualitative exercise will be conducted, co-ordinated by the policy lead for transgender individuals in adult and youth custody. The HMPPS Transgender Advisory Board may seek to commission further auditing and monitoring.

Resource Impact: Accommodating the needs of transgender individuals is a duty that will be met locally through case management, access to regimes, programmes, medical care and appropriate treatment from staff. This will have an impact on local resources, particularly with the evidence-based assessments and criteria as outlined in this policy. Some central support will be available to staff who are convening Case Boards and managing complex cases.

The need to keep staff informed of their duties and responsibilities via clear and current information is recognised. Guidance materials will be developed for staff, and training needs considered. Staff should make use of the guidance provided by the HMPPS Transgender Team to apply this policy locally and contact the functional mailbox below for any additional advice

Contact: HMPPSTransgender@justice.gov.uk

Deputy/Group Director sign-off: Yaser El-Borgi, Deputy Director, Central Operational Services

Approved by OPS for publication: Sonia Crozier and Michelle Jarman-Howe, Joint Chairs, Operational Policy Sub-board, 12 June 2019

Revisions

Date	Changes
15 August 2019	Revised contact email (page 2) and para 4.37 amended
27 January 2020	References to IEP have been changed to the Incentives Policy Framework (IPF), which came into force on 13 January 2020
26 February 2023	Presumption added that transgender women with any sexual or violent offence (Annex D) conviction or current charge and/or who have birth genitalia will not be held in the general women's estate.

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1. Purpose and Scope

- 1.1 This Policy Framework is intended to provide staff with clear direction in the support and safe management of transgender individuals in our care, including managing risks both to and from transgender individuals, and enabling risk to be managed when an individual is placed into a prison which is different to that of their legal gender or where a Gender Recognition Certification (GRC) has been obtained.
- 1.2 This Policy Framework provides information and sets out mandatory actions relating to the care and management of transgender¹ individuals in Prisons, Private Prisons, Youth Secure Estate, Approved Premises (AP), Probation and private providers who provide services on behalf of HMPPS.
- 1.3 The primary focus is on individuals who express a consistent desire to live permanently in the gender with which they identify, and which is opposite to their sex registered at birth, including those who:
- wish to seek to transition permanently to a new gender identity;
 - wish to consistently live in the gender with which they identify but do not seek to have this recognised in law via a GRC;
 - have gained legal recognition of their new gender identity.
- 1.4 Also included in the scope of this framework are those who identify as transgender but do not seek to acquire a new legal gender.² They will be managed in accordance with their legally recognised gender and include those who:
- are intersex or individuals with variations of sex characteristics who are content with their sex assigned at birth;
 - do not identify as a gender (non-binary);
 - have a changing gender identity (gender fluid);
 - are cross dressers (those who may sometimes wear clothing typically associated with the opposite gender).
- 1.5 This policy framework builds on the previous instruction (PSI 17/2016) in the following key respects:
- Adding the presumption that transgender women (including those with GRCs) with birth genitalia and/or any sexual or violent offence conviction (see Annex D) or current charge should not be held in the general women's estate, with exemptions recommended by a Complex Case Board (CCB) being referred to the HMPPS Director General Operations for consideration and the Secretary of State for Justice for a final decision. **An agreed exemption must be in place before any allocation to the general women's estate can occur.**
 - All transgender prisoners with GRCs must be referred to the Central Operational Frameworks Team for review and to consider escalation to a CCB.
 - Safeguarding and decision-making processes are strengthened via Local and Complex Case Boards (CCB)
 - Risk Assessment principles within CCBs have been expanded and identified
 - CCBs are convened monthly and chaired by Prison Group Directors
 - Criteria for CCBs are clearer and more specific
 - Local Case Boards, for all prisons, to be chaired by an operational Band 8 (or higher) deemed competent by the Governor (or equivalent in a privately managed prison and deemed competent by the Director), of which a small number will be allocated per prison group

- Local Transgender Case Boards to be chaired by a Probation Service member of staff at (Probation) Band 6 (or higher) deemed competent for Approved Premise allocation
- Scope is extended to include Youth Custody Service
- Advance disclosure is introduced prior to a Case Board
- CCB process is introduced for Probation Approved Premise allocation.
- Initial Local Transgender Case Board to be held within 14 days, not 3 days, to allow for disclosure and informed risk assessments. The new timeframe will allow for a suitable amount of time in which to collect and share relevant information.

Risk assessment and risk management

- 1.6 The proper assessment of risk is paramount in the management of all individuals in our care. The management of individuals who are transgender, particularly in custodial and residential settings, must seek to protect both the welfare and rights of the individual and the welfare and rights of others around them, including staff. Decisions must be informed by all available evidence and intelligence in order to achieve an outcome that balances risks and promotes the safety of all in our care and management.

2. Evidence

HMPPS Analytical Data

- 2.1 The numbers of transgender individuals held in the adult prison estate are low (approximately 2.9 transgender prisoners reported per 1,000 prisoners in custody). In a snapshot data collection at 31 March 2022 and published in November 2022, there were 230 prisoners currently living in, or presenting in, a gender identity different to their sex recorded at birth and who had sat a Local Case Board.

Annual data collection exercises in relation to those in custodial settings have taken place since 2016 and the results published in the HMPPS Annual Offender Equalities Report.

- 2.2 According to the data collection exercise conducted in March 2022:

- 79 of the 123 public and private prisons (64%) in England and Wales said that they had 1 or more transgender prisoners.³
- Of these, 187 reported their legal gender⁴ as male, 43 reported their legal gender as female. When asked about the gender the prisoner identified as, 168 identified as female, 42 as male, 13 as non-binary and 7 self-identified in a different way or did not provide a response.
- 21 of the 230 prisoners reported as being from an ethnic minority group (excluding white ethnic) and 197 reported being from a White background. There were 12 transgender individuals who chose not to disclose their ethnicity.
- There were 49 transgender prisoners in women's prisons. 42 were transgender men and 6 were transgender women.
- There were 181 transgender prisoners in men's prisons. 162 were transgender women.

- 2.3 The number of transgender people in the general population who seek legal recognition of the gender with which they identify appears to be low. Where individuals have gained legal recognition, they must be treated in accordance with their legally recognised gender identity. Where it is not assessed as appropriate to hold them in a prison or approved premises that matches their legal gender, their gender identity must still be respected in all other ways and every effort must be made to ensure access to gender-appropriate

services, facilities and items. Some may seek ongoing support following their transition, whilst others will not wish for their previous gender to be acknowledged. In all cases, any risks posed, whether to the individual or to others, need to be acknowledged and managed.

3. Outcomes

- 3.1 The high-level outcomes of the new Policy Framework are intended to strike an appropriate balance, ensuring;
- 3.2 All transgender individuals are managed safely with their rights properly respected and in accordance with the law⁸.
- 3.3 Decisions are informed by all available evidence and intelligence in order to achieve an outcome that balances risks and promotes the safety of all individuals in custodial settings and approved premises. This includes an assessment of risks presented to and by transgender individuals.

Gender Identity and Recording

- 3.4 Individuals managed by HMPPS are able to self-declare that they are transgender and are allowed to express the gender (or non-gender) with which they identify, with staff using correct pronouns.
- 3.5 Administrative systems must accurately record the legally recognised gender of individuals. **Legally recognised gender is the gender shown on an individual's birth certificate or GRC.** Note that other documents can be changed without the individual having changed their legal gender by obtaining a GRC, so such documents should not be treated as confirmation of legal gender.
- 3.6 Allocation must be made according to legal gender, with separate accommodation in the women's estate (e.g. E Wing at HMP Downview) being used for transgender women with GRCs who have birth genitalia and/or any sexual or violent offence conviction or current charge (see Annex D).
- 3.7 **Searching should never be used to ascertain gender or genitalia.** Where an individual advises that they have had gender affirmation surgery, medical documentation or confirmation via healthcare records should be requested to confirm this. Until such confirmation is received, or an exemption from the Secretary of State for Justice is granted, no allocation to the general women's estate can occur.
- 3.8 Where legal gender has not been confirmed for a transgender individual via sight of a birth certificate or GRC, allocation must initially be made in line with birth sex (so a transgender woman should be allocated to the men's estate and a transgender man should be allocated to the women's estate). Any allocation where there is no evidence of legal gender must be flagged with the Central Operational Framework Team (HMPPStransgender@justice.gov.uk).
- 3.9 Following any allocation where legal gender has not been confirmed, efforts to establish legal gender must continue following the individual's arrival. If an individual is unable to provide a birth certificate or sight of a GRC, they may give permission for staff to check directly with the Gender Recognition Panel (0300 1234 503 or GRPenquiries@hmcts.gsi.gov.uk) that a GRC has been issued. Confirmation from the GRP should be accepted as full confirmation of legal gender.

- 3.10 If the individual is unable, or does not wish, to provide evidence of legal gender and does not give permission for contact to be made with the GRP, an urgent referral must be made to the Central Operational Framework Team (HMPPStransgender@justice.gov.uk) for a CCB to consider the case. The prison must assure itself, ahead of the CCB convening, that a full local assessment of risk (from others, to others and to self) has been completed and that all immediate risks are being managed.
- 3.11 Where legal gender is confirmed, the gender an individual identifies as is recorded in addition to the legally recognised gender, where this is different, which makes it clear that this is not the person's legally recognised gender.
- 3.12 All individuals with a GRC must be referred to the Central Operational Framework Team via their functional mailbox (HMPPStransgender@justice.gov.uk). The Operational Framework Lead will complete a review of the case and determine whether a CCB is required.
- 3.13 In allowing individuals to express the gender with which they identify, this does not oblige HMPPS to locate them accordingly; it is one of many factors that may influence such decisions.

Safety, Risks and Risk Assessment

- 3.14 Individuals who are transgender are treated fairly and decently, with their rights properly respected and managed in accordance with the law.
- 3.15 Safety and risk considerations are paramount when making decisions about the care and management of transgender individuals. The implementation of a robust decision-making process, by way of Local and Complex Case Boards, fully takes account of risks to all prisoners and young people in custody and residents in Approved Premises, to staff, as well as risks presented to the individual. Assessment of risk is based on valid, evidenced factors that relate to that individual.
- 3.16 Decisions are free from bias, follow a clear, recorded process and are undertaken by staff who have a sound basic awareness of transgender identity⁹.

Training and Expertise

- 3.17 Staff caring for and managing individuals who are transgender have access to training, as well as support and advice from colleagues with expertise. The Central Operational Framework Team can be contacted with any queries via the functional mailbox: HMPPStransgender@justice.gov.uk.

Monitoring

- 3.18 An annual data collection exercise of all individuals in custody who are transgender is completed. Quarterly monitoring occurs through the Transgender Advisory Board (see section 5).

Other Equalities Considerations

- 3.19 All protected characteristics must be considered when making decisions about individuals who are transgender.

4. Requirements

Headline Requirements

- All individuals in our care must be allowed to express their gender identity.
- Their preference does not oblige us to allocate them to a men's or women's prison or approved premises accordingly; it is one of many factors considered.
- **Transgender women with birth genitalia and/or any sexual or violent conviction or current charge (see Annex D) should not be held in the general women's estate, unless an exemption is authorised by the HMPPS Director General and the Secretary of State for Justice.** Evidence of gender affirmation surgery will be required in the form of medical documentation or confirmation via healthcare records.
- Where an exemption has not been agreed, such prisoners without GRCs should generally be held in the men's estate, and those with GRCs in separate accommodation within the women's estate. However, this is subject to a full CCB risk assessment to consider the circumstances of each individual.
- Those with GRCs should be allocated to E Wing at HMP Downview, following consultation with the Women's Directorate. Temporary holding in the men's estate should be considered in order to facilitate a safe transfer, ensuring that this is for the shortest time possible and that the individual is held separately from other prisoners.
- Where, by exception, a CCB recommends that a transgender woman with birth genitalia and/or any sexual or violent conviction or current charge (see Annex D) should be located in the women's estate, a referral must be made to the HMPPS Director General Operations and, subsequently, the Secretary of State for Justice for a final decision. **An agreed exemption must be in place before any allocation to the general women's estate can occur.**
- All other individuals who are transgender (who do not meet the above criteria) must be initially allocated to part of the estate which matches their **legally recognised gender**. When legal gender is not confirmed, allocation should initially be in line with the individual's birth sex and urgent notification should be sent to HMPPStransgender@justice.gov.uk and the relevant regional office. In these cases, efforts to establish legal gender (via birth certificate, GRC or confirmation from the Gender Recognition Panel) must then continue following allocation.
- The only exceptions are when allocation decisions are approved by a Prison Group Director or the Community Interventions Deputy Director¹⁰ via a Complex Case Board, or YCS Head of Casework or Band 8 Senior Case Manager. However, any decision to hold a transgender woman with birth genitalia and/or any sexual or violent offence conviction or current charge (see Annex D) in the women's estate must have the appropriate exemption, approved by the Secretary of State as above.
- All individuals with a GRC should be referred to the Central Operational Framework Team via their functional mailbox (HMPPStransgender@justice.gov.uk).
- A balanced approach must be adopted when making allocation, care and management decisions relating to transgender individuals, balancing the risks and well-being of the individual with the risks or impact on well-being that the person may present to others, particularly in custodial and residential settings.
- Additional structured risk assessments and resources are required before a person is allocated or transferred to part of the estate which does not match their sex registered at birth, including where a person has gained legal recognition of the gender with which they identify.

Care and Management:

Prioritise the safety and well-being of all individuals in custody/Approved Premises (AP) in our care

- 4.1 All individuals in our care must be viewed as a potentially 'at-risk' group in terms of suicide and self-harm, and this applies to an even greater degree for those who are transgender. Assessment Care in Custody Team (ACCT) procedures or Suicide and Self Harm (SASH) assessments must be utilised for any person at risk of suicide or self-harm. Early communications must include an awareness by staff that transgender individuals may be at a high risk of self-harm and self-inflicted death and that additional support may be required during first night in custody. Should risk or well-being issues relating to transgender status arise immediately upon being received into custody, a senior manager must be informed.
- 4.2 Reception/Induction processes must be respectful and afford individuals who are transgender dignity throughout, with immediate consideration given to the safety of the transgender individual and others in custody/AP.
- 4.3 All identified risks presented by the transgender individual which may impact on the safety and well-being of other individuals, or which may be presented by others to the transgender individual, must be considered as a priority from the outset. Thereafter this must be integral to all decisions relating to their care and management.
- 4.4 Facilitating a Voluntary Agreement¹¹ at the earliest opportunity, providing access to the relevant facilities list and informing the individual that a transgender case board will be held within 14 calendar days, may assist to reduce anxiety.
- 4.5 Some individuals who are transgender may need to be placed in a supportive environment, separate from the main regime until a Local Case Board¹² has been convened within 14 calendar days of reception. However, every effort must be taken to avoid isolation (such as in Care and Separation Units or in in-patient healthcare units) just because they are transgender and where, for instance, there is no clinical reason for them to be there. More information on the use of care and separation is below (see 4.110)

Allocation Decisions

- 4.6 Any transgender women who have a current or previous conviction for a sexual or violent offence or charge (see Annex D) and/or who have birth genitalia will generally be held in a prison which matches their sex registered at birth (those without GRCs), or in separate accommodation within the women's estate (those with GRCs). However, this is dependent on a full CCB risk assessment to consider the circumstances of each individual. Those with GRCs should be allocated to E Wing at HMP Downview, following consultation with the Women's Directorate. Temporary holding in the men's estate should be considered in order to facilitate a safe transfer, ensuring that this is for the shortest time possible and that the individual is held separately from other prisoners.
- 4.7 A CCB can consider, by exception, to recommend that a transgender woman who meets one or both of these criteria should be allocated to the general women's estate. In these circumstances, a recommendation for an exemption must be made to the HMPPS Director General and, subsequently, the Secretary of State for Justice for a final decision. Recommendations will only be made where the CCB has a high level of confidence that the individual poses a low risk of harm to other women in custody/APs.
- 4.8 It should be explained to all other transgender individuals that they must initially be allocated according to their legally recognised gender. When legal gender is not confirmed, allocation should initially be in line with the individual's birth sex and urgent notification

should be sent to (HMPPStransgender@justice.gov.uk) and the relevant Regional Office. In these cases, efforts to establish legal gender (via birth certificate, GRC or confirmation from the Gender Recognition Panel) must then continue following allocation. A person may only be placed into a service which does not match their known legal gender where this is approved by:

- A Complex Case Board, chaired by a Prison Group Director in respect of men's and women's prisons;
- Head of Casework or Band 8 Senior Case Manager in the Youth Custody Service;
- Community Interventions Deputy Director¹³ in respect of Approved Premises

In all of the above circumstances, an exemption must also be in place, where this relates to a transgender woman with any sexual or violent offence conviction or current charge (see Annex D) and/or who has birth genitalia (see 4.7).

- 4.9 Where an individual holds a GRC and allocation is made in line with this, a referral must be made to the Central Operational Frameworks Team via their functional mailbox (HMPPStransgender@justice.gov.uk) for a paper review to be conducted. Where the Framework Lead feels further consideration is required, they may escalate to a CCB.
- 4.10 A person remanded into custody must initially be allocated to an establishment which matches their legally recognised gender (when known – see 4.8 when legal gender is not confirmed) except where a transgender woman has any conviction or current charge for a sexual or violent offence (see Annex D) and/or has birth genitalia. In these instances, they must be held in line with their sex registered at birth (for those transgender women without GRCs), or in separate accommodation (e.g. E Wing, HMP Downview) in the women's estate (for those with GRCs).
- 4.11 All known risks need to be taken into account and managed until a Local Case Board is convened. Consideration must be given to an appropriate location within the prison that ensures the individual's safety and that of all others in our care, with the use of separate accommodation where appropriate. In all circumstances, regardless of allocation, the risks posed to the transgender individual by other prisoners, the risks they may pose to others and the risk that they may pose to themselves must be taken into account.

Prisoners Escort Custodial Service (PECS) contractors¹⁴

- 4.12 Any transgender woman with a current or previous conviction for a sexual or violent offence or current charge (see Annex D) and/or who has birth genitalia must generally be held in a prison which matches their sex registered at birth (for those without GRCs), or in separate accommodation in the women's estate (for those with GRCs). However, this is the subject to a full CCB risk assessment to consider the circumstances of each individual. Transgender women with GRCs who meet this criteria should be allocated to E Wing at HMP Downview, but only following consultation with the Women's Directorate (see 4.6).
- 4.13 A CCB can, by exception, recommend an exemption to agree holding a woman who meets one or both of these criteria in the women's estate, but this must be approved by the HMPPS Director General and the Secretary of State for Justice before any such allocation can occur.
- 4.14 For those who do not meet the criteria at 4.12, allocation must be in accordance with their legally recognised gender identity, even where this is contrary to the view expressed by the individual. However, the prison regional office must check to ascertain if either a local or Complex Case Board has taken place and, where a Complex Case Board has made an alternative decision, the individual should be allocated in line with this.
- 4.15 A person's legal gender must be recorded by the PECS provider who must consult the

prison regional office prior to transfer.

- 4.16 The PECS contractor will alert the Governor and prison's regional office where an offender has said they have a GRC and this cannot be determined via sight of a birth certificate or GRC documentation and/or there is any risk of harm to the individual and/or to other individuals in custody. An email should also be sent to HMPPStransgender@justice.gov.uk.
- 4.17 Where an individual who is transgender returns to court for hearings whilst in custody, the PECS contractor's staff must be notified by the prison or youth custody setting if the allocation decision has changed.

Purpose of Case Boards

- 4.18 Case boards are provided primarily for individuals who seek to live permanently and consistently in a different gender to the sex registered at birth¹⁵. This policy framework provides two types of transgender case board:
- Local Case Board¹⁶
 - Complex Case Board.
- 4.19 At either board, individuals who are transgender must be asked for their view of allocation within the prison, Youth Secure Estate or Approved Premises estates (i.e. male or female). Where an individual expresses a view of location that is consistent with their legally recognised gender identity, the Local Case Board should generally consider how the case should be managed appropriately within that location. However, there may be exceptions where the risk to or from the individual is deemed too high to manage in that location, or where the view expressed is thought to have been influenced inappropriately, in which case a Complex Case Board may still need to express a balanced view on location.
- 4.20 Additionally, a transgender woman with a conviction or current charge of any sexual or violent offence (see Annex D) and/or who has birth genitalia should not be held in the general women's estate, unless an exemption has been agreed by the HMPPS Director General and Secretary of State for Justice. Recommendations for exemptions can only be made by a Complex Case Board and only where the Board has a high level of confidence that the individual poses a low risk of harm to other women in custody/APs. Where an exemption has not been agreed, such prisoners without GRCs should generally be held in the men's estate, and those with GRCs in separate accommodation within the women's estate. However, this will be dependent on a full CCB risk assessment to consider the circumstances of each individual. The separate accommodation for transgender women who meet this criteria is available via E Wing at HMP Downview.
- 4.21 Where an individual expresses a view of location that is not consistent with their legal gender, or where a transgender woman with any sexual or violent offence conviction or current charge (see Annex D) and/or with birth genitalia expresses a wish to be located within the women's estate, the individual must be asked to provide confirmation of living in the gender with which they identify.¹⁷ The strength of the information provided by the individual must be initially considered within the context of a Local Case Board. (See Annex B).
- 4.22 Where a Local Case Board considers that the safest arrangements both for the transgender person and the safety of others in custody would be best served by allocation to another part of the estate, a referral must be made to a Complex Case Board.¹⁸ The referral must be signed off by the Governor, or Director in a privately managed prison. A referral can be made at any point and, in exceptional circumstances, a Complex Case Board may be convened without a local board having taken place (for example where individuals present a very high risk to others or where full information is available to enable informed decisions to be made).

- 4.23 Where a Local Case Board feels that the safest arrangements would be to continue holding the individual in the estate matching their legal gender and they do not support a transfer, notification must be sent to HMPPStransgender@justice.gov.uk.
- 4.24 All assessments must be made on a case-by-case basis. A balanced approach must be adopted where the safety and well-being of the individual who is transgender is balanced by an informed assessment of any risks that the individual presents to other people (particularly in custody or residential settings such as in women's prisons).
- 4.25 A board will enable decisions which seek to ensure that those who are transgender and all other vulnerable individuals held in custody or residential settings are managed safely, informed by all known risk information. This must include a thorough and balanced approach to assessing any risk to the transgender individual of self-harm and/or harm from others, and any risk of harm which the transgender individual may present to others.
- 4.26 A proper assessment of risk is paramount in the management of all individuals subject to custodial and community sentences. The management of individuals who are transgender, particularly in custodial and AP settings, must seek to protect both the welfare and rights of the individual, and the welfare and rights of others in custody around them. These two risks must be considered fully and balanced against each other.
- 4.27 Decisions must be informed by all available evidence and intelligence to achieve outcomes that balance risk and promote the safety of all individuals in custody as set out below¹⁹.

Potential risks to the individual from others, or personal vulnerabilities of the individual, related to: (*indicates critical factors)

- *Mental health and personality disorder;
- *History of self-harm;
- *Anatomy²⁰, including risk of sexual or violent assault
- *Individual's testimony of a sense of vulnerability, e.g. in a male environment, in a particular prison, or from a particular prisoner or group of prisoners;
- *Risk of suicide;
- *Medication including the absence of medication and the impact of known side effects
- *History of being attacked, bullied or victimised;
- *Intelligence/evidence of coercion, manipulation, or threats towards the individual
- Family circumstances/relationships
- Age
- Physical health
- Learning disabilities or difficulties.

Potential risks presented by the individual to others in custody and an AP related to: (*indicates critical factors)

- *Offending history, including index offence, past convictions and intelligence of potential criminal activity- e.g. credible accusations.
- *Anatomy²¹, including considerations of physical strength and genitalia;
- * Sexual behaviours and relationships within custodial/residential settings;
- *Use of medication relating to gender reassignment; and use of medication generally;
- *Past behaviour in custody, the community, in the care of the police, or in the care of prisoner escort services;
- *Intelligence reports;
- *Evidence of threats towards others;

- *Mental health and personality disorder;
- Learning disabilities or difficulties;
- Substance misuse.

Views/characteristics of the individual: (*indicates critical factors)

- *Birth sex²², legal gender and presented gender;
- *Strength of confirmation of presented gender, including medical treatments and full evidence of gender identity (such birth certificate, or a GRC)
- *View on establishment allocation, prison management and lifestyle.

4.28 Whilst the view of the individual on location should always be taken into account, this view must be put into the context of any risks that may be posed to the individual by others (including the risk that they could be threatened or manipulated into giving that view) and the risk that could be posed by the individual to others, whether in the men's or women's estate. The dignity and safety of women is of the utmost importance.

4.29 It is not envisaged that a case board will be routinely convened for individuals who identify as non-binary, gender fluid or cross dresser. These individuals will primarily be managed on a case-by-case basis via offender supervisors, keyworkers, prison equality leads and regional psychologists. The use of Voluntary Agreements will assist in agreeing how they will be allowed to express their gender identity following risk, security and operational assessments. However, it may be appropriate to hold a Local Case Board, if it is felt that there are relevant issues to discuss about the appropriate management of the case.

Convene a Local Case Board²³ within 14 calendar days of arrival into custody or approved premise²⁴ or when the transgender status of an individual becomes known.

4.30 Adults, children in the Youth Estate²⁵ and young people in Young Offender Institutions (remanded or sentenced to custody or required to reside in approved premises) who have a consistent and permanent wish to express a gender identity different to their legally recognised gender, or who hold a GRC, must be informed that a Local Case Board will be convened to consider their care and management.

4.31 The Local Case Board must be convened within fourteen calendar days of reception into custody or arrival into approved premises.

4.32 Information must be prepared in advance of the board and disclosed to the individual at least **four** calendar days prior to the meeting and provided with support to understand the information, as necessary. It must be ensured that all issues around sensitivity and confidentiality are addressed (see below 4.53).

4.33 A template for disclosure is contained in Annex C where all risk information relating to the individual must be completed. This includes risk to self, to others and risk from others.

4.34 A care and management plan must be produced at the Local Case Board stage which fully takes account of all risk factors identified both to the transgender individual and any risk that the person presents to others. A Local Case Board must be reconvened, as necessary, to provide all parties with an opportunity to revisit earlier decisions in order to:

- provide further confirmation of living in the gender the individual identifies with;
- review new information
- consider suitability of moves within the establishment, and,
- make arrangements for transfers to other prisons (where these transfers are within the same estate and in line with the Allocation section of this framework).

Pre-Sentence Local Case Board

- 4.35 Pre-sentence Report writers must consider requesting a full adjournment for the preparation of a pre-sentence report where an individual discloses that they are transgender and/or where they have the protected characteristic under section 7 of the Equality Act 2010.
- 4.36 An adjournment for a pre-sentence report provides the opportunity for a local case board to take place to allow consideration of the individual's circumstances and risks and how these would be managed in a custodial environment. Information from the board can then be used to help inform a proposed sentence to the court that takes account of the person's transgender status.
- 4.37 Probation Directors must make available a divisional Transgender Single Point of Contact (SPOC) Band 5 or higher. The SPOC will alert the nominated operational prison manager (Band 8 or higher deemed competent by the Governor) that a Local Case Board is required. Where custody is a likely sentencing outcome, an adjournment **must** be requested and notification must be sent to the Probation Transgender Case Board to be convened, this will enable the prison to prepare for the transgender person to be received into custody in accordance with their legally recognised gender (or for transgender women with any sexual or violent offending history or current charge – see Annex D - or with birth genitalia, in line with their sex registered at birth or to separate accommodation via E Wing at HMP Downview).
- 4.38 Where a pre-sentence Local Case Board (chaired by an operational Band 8 Prison manager) considers that the appropriate allocation for the person is a part of the prison estate which does not match their legal gender, this can only be agreed/recommended by a Complex Case Board, chaired by a Prison Group Director preferably prior to sentence. Similarly, where the board determines that a transgender woman with any sexual or violent conviction or current charge (see Annex D) and/or birth genitalia should be allocated to the general women's estate, this must be referred to a Complex Case Board who can consider, by exception, whether an exemption to the policy should be recommended. Any such Complex Case Board recommendation of applying an exemption must then be referred to the HMPPS Director General of Operations and the Secretary of State for Justice for a final decision.
- 4.39 Where a Complex Case Board cannot be held prior to sentencing, transgender women with any sexual or violent offence conviction or current charge (see Annex D) and/or with birth genitalia will generally be allocated in line with their sex registered at birth (those without GRCs), or to separate accommodation within the women's estate (those with GRCs). However, this will be subject to a full CCB risk assessment to consider the circumstances of each individual. All other transgender individuals must be allocated in accordance with legal gender until a Complex Case Board is held.
- 4.40 Where legal gender is not confirmed, this should be communicated to the Probation SPOC who should ensure that the Local Case Board is aware. Please refer to section 4.8 for instruction on allocation for those where legal gender identity is not confirmed via birth certificate or GRC. The SPOC will provide support to the Chair.

Chair and Attendees of Local Case Boards

- 4.41 A Local Case Board for individuals in custody (and those at risk of custody)²⁶ must be chaired by a minimum band 8 operational prison manager, deemed competent by the Governor (or equivalent in a privately managed prison deemed competent by the Director). The Governor must sign off all decisions of the Local Case Board. Attendees (a minimum of 4) at a Local Case Board in adult custody must include the following mandatory attendees:
- Prison Manager Chair (Band 8 minimum/privately managed prison equivalent)

- Safer Custody manager
- Offender supervisor/wing officer
- Pre-Sentence Report writer / Offender Manager (where allocated)

The following additional optional attendees may also be asked to attend to discuss the local support that is provided to the individual and consider whether they meet the criteria for a referral for a Complex Case Board to consider their allocation:

- Prison healthcare (Commissioner and Provider)
- Psychology Services Group staff member (one who either works at the prison, or works as part of a regional team which provides psychology services to the prison)
- Local Equality Manager/Lead
- GP
- Gender Identity Clinic specialist
- PECS Duty Manager (where relevant)
- HMPPS Transgender Team (if required for advice on implementing the policy framework)
- HMPPS Women's Directorate (where a decision is made in relation to the women's estate)

The individual whose case is being considered for part of the meeting to express their view and any considerations they may have for the board.

Although the individual being considered by the board must be given the opportunity to attend for part of the meeting or to provide their representations in writing ahead of the board, their attendance is voluntary. If an individual does not wish to engage in the local or complex case board process, the benefits should be explained to them (i.e. that it gives them the opportunity to make their views on their care and management known and to help staff better understand their needs). However, if the individual still does not wish to take part, the board must still go ahead with the individual's wishes not to engage being clearly recorded. Any decision of an individual not to make representations to the board should be respected and should not, in itself, influence the decision making-process.

- 4.42 Arrangements for Youth Custody Services for Children and Young people are set out in the relevant service specific operational guidance.
- 4.43 A Local Case Board for individuals in Approved Premises must be chaired by a minimum Probation Band 6, deemed competent by the relevant Probation Director who must sign off all decisions of the Local Case Board. Arrangements are set out in relevant service specific operational guidance.
- 4.44 The individual must be provided with an opportunity to participate in and/or make their views known to all Case Boards either in person, via telephone, video-link or written submission.

Refer complex cases to a centrally managed Complex Case Board

- 4.45 The criteria for individuals that must be referred to a Complex Case Board are:
- Where allocation to the general women's estate is sought for a transgender woman with any sexual or violent offence conviction or current charge (see Annex D) or birth genitalia. When, by exception, a CCB recommends this allocation, a referral will be made to the HMPPS Director General and Secretary of State for Justice
 - Where prison/AP allocation is sought and is supported by the local case board which does not match the individual's legal gender.

- Where a transgender prisoner may present a risk to others and/or to themselves which requires special management.
- Where a transgender individual is at risk from other people in custody.
- Where a transgender individual with a GRC presents risks which are deemed to be unmanageable within the estate/AP of their legal gender and may need to be held in separate accommodation or in the estate of the opposite gender in accordance with Prison Rule 12.
- Where a person gains legal recognition of their gender during a custodial term or whilst on licence residing at an AP.
- Where transgender young people transitioning from youth custody to the adult prison estate
- When any other identified risk requires special management, including where emerging risks (at any point during remand, sentence or residence) prompts a referral or when decisions are needed on behalf of the wider prison/AP estate.

4.46 In addition, notification must be sent to the Central Operational Framework Team where:

- an individual with a GRC enters custody
- an individual has requested allocation to a part of the estate which does not match their legal gender, but this **is not** supported by the local case board;
- a transgender individual is under the age of 21 years and is held in the adult estate;
- where an individual states they have a GRC but legal gender has not been confirmed via sight of this or a birth certificate, or via confirmation from the GRP; or
- where a transgender individual is placed in a Care and Separation Unit/segregation

4.47 Probation must determine allocation in Approved Premises (AP) separate to a decision made in the prison estate via a complex case board.

4.48 All Complex Case Boards must be chaired by a Prison Group Director for prison allocation or the Community Interventions Deputy Director²⁷ for AP allocation. Attendees must include:

- Psychology Lead
- Head of women's team or a representative from the Women's Directorate (for cases which involve the women's estate/AP)
- HMPPS equalities team (to advise on equalities and compliance with the policy)
- Attendees for a Local Case Board as above

4.49 Transgender women with any conviction or current charge for a sexual or violent offence (see Annex D) and/or who have birth genitalia will generally be held in the estate which matches their birth sex (those without GRCs) or in separate accommodation in the women's estate (those with GRCs), subject to a CCB assessment of the individual circumstances. However, by exception, where a Complex Case Board considers it to be appropriate, a recommendation to apply an exemption allowing allocation to the general women's estate can be made. Recommendations to apply an exemption must be referred to the HMPPS Director General and Secretary of State for Justice.

4.50 Additionally, before making an allocation decision to the women's estate/AP for a transgender woman (with or without a GRC), a Complex Case Board will decide if a further risk assessment is required, focussing on risks to the individual from other female prisoners/residents, as well as any risks to other female prisoners/residents with oversight by the Regional Psychologist lead for the women's estate, prior to any transfer.

4.51 Before making an allocation decision to the men's estate/AP for a transgender man (with or without a GRC), a Complex Case Board will decide if a further risk assessment is required, focussing on risks to the individual from other male prisoners/residents, as well as any risks to other male prisoners/residents, with oversight by the Regional Psychologist lead, prior to

any transfer.

Disclosure of information to the individual prior to all (local and complex) case boards

- 4.52 In order to ensure that transgender case boards are procedurally fair, an individual must be provided with written disclosure of all information, subject to paragraph 4.42 and 4.43, which will be considered by a transgender case board at least **four** days prior to the meeting. Additional time may be required by the individual if they require assistance in reading or understanding the information.
- 4.53 This also provides an opportunity to collate evidence-based information to enable the board to make an informed decision about the care and management of the person, including all risk information relating to self-harm, risk from others, and risks the person may present to others. Annex C contains the pro forma which must be completed prior to each Board. Where information is not available this must be stated on the pro forma (for example where an OASys or other assessments have not been completed).
- 4.54 Where a case board is not able to make an informed decision due to incomplete assessment information, this information must be requested and a further board reconvened. Safety and risk considerations must be paramount in all arrangements in respect of the individual and of others who may be placed at risk as a result of decisions taken by a case board.
- 4.55 The disclosure of some information may not be acceptable for security or operational issues. Information may be withheld from the prisoner in certain circumstances, such as;
- in the interests of national security;
 - for the prevention of crime or disorder, including information relevant to prison security;
 - for the protection of a third party who may be put at risk if the information is disclosed;
 - if, on medical or psychiatric grounds, it is felt necessary to withhold information where the mental and or physical health of the prisoner could be impaired;
 - where the source of the information is a victim, and disclosure without their consent would breach any duty of confidence owed to that victim, or would generally prejudice the future supply of such information.
- 4.56 If this information is withheld, a “gist” (i.e. a summary) of the information must be provided.

Support gender expression

- 4.57 All adults, children and young people who declare they are transgender must be permitted to present and express themselves in the gender with which they identify (or in a gender-neutral way) and provided with access to the relevant facilities list. This must take into consideration that for prisoners and offenders in Approved Premises, the establishment is their living space
- 4.58 In respecting an individual's gender identity and expression, this does not oblige the organisation to allocate them accordingly; it is one of many factors that may influence such decisions.
- 4.59 Gender expression must comply with relevant dress codes, which are based on decency and which take into account any potential vulnerability of the individual. Where relevant, individuals remain subject to any requirement to wear prison issue clothing and must comply with the Incentives Policy Framework. Clothing, hair, make-up, prostheses and other accessories may be subject to risk, security and operational assessments which will be discussed at a local transgender case board. Agreement regarding these items should

be sought via a Voluntary Agreement.

- 4.60 Prison Group Directors must ensure that all prisons in their region maintain both a canteen list and a facilities list of items to allow gender identity expression from a corresponding prison in the opposite estate that have been pre-approved by their own security department.
- 4.61 Any restrictions imposed must be based on justifications which are properly evidenced and reasoned, and those restrictions must be proportionate.

Respect gender identity in communications

- 4.62 Individuals who are transgender must be allowed to adopt a gender-appropriate or gender-neutral name and be addressed by others consistent with the gender with they identify, or as gender-neutral²⁸.
- 4.63 Staff must make every effort to communicate with individuals in ways that respect their gender identity, using appropriate verbal and written communication and use of pronouns.

Recording: Determine and record the legally recognised gender

- 4.64 Arrangements must be in place to determine the legally recognised gender of all individuals at the first point of contact to inform assessments and decisions where binary (male/female) services are provided²⁹. Individuals who have gained legal recognition of their gender identity via a gender recognition certificate (GRC) can be issued with a new birth certificate in their acquired gender identity if their birth was registered in the UK. It must be made clear to the individual that their legal gender is what is recorded on their birth certificate of GRC, if they have obtained this. One of these documents (or confirmation from the Gender Recognition Panel) must be seen by a member of HMPPS staff in order to confirm legally recognised gender.
- 4.65 Where a person's legal gender is determined via sight of the individual's birth certificate or GRC (or confirmation from the GRP), the legal gender must be recorded on all case administration systems where 'sex' (male or female) is required.
- 4.66 Where legal gender cannot be determined, or where evidence of legal recognition from another country is provided, staff must notify their regional office and the Central Operational Framework Team.³⁰
- 4.67 Staff can ask whether an individual has a GRC where that is necessary for offender management purposes. However, staff should initially request sight of a birth certificate as confirmation of legal gender where the person was born in the UK. Someone born abroad who has a UK-issued GRC may not have been able to obtain a new birth certificate in their acquired legal gender. If an individual cannot produce a birth certificate or a GRC, they may give permission for staff to check directly with the Gender Recognition Panel to confirm that a GRC has been issued.³¹
- 4.68 Searching of the person **must not** be used as a means to determine gender.

Seek written consent to disclose the sex assigned at birth for individuals who are protected under the Gender Recognition Act 2004

- 4.69 All individuals who disclose that they have applied for, or have gained, a GRC must be asked to provide written consent for their birth sex, and/or details of the application process, to be disclosed to/from relevant staff in or on behalf of HMPPS³². The benefits of disclosure may be explained by staff, which include gaining a more informed approach in planning their care

and management, and may also assist in gaining an increased understanding of the triggers for offending and to improve sentencing outcomes. If an individual does not provide their consent, their lack of consent can only be overridden where recording and disclosing information about their gender identity history is necessary to properly manage them.

4.70 Information about the gender identity history of an individual with a GRC must be treated with care, as is the case for other sensitive information held about offenders. However, staff should also remain aware that any disclosure that is not necessary for offender management purposes and where no other exemption applies, is a criminal offence.

4.71 Staff can disclose previous gender identity and/or details of the application process only in the following exceptions to the offence in s.22 GRA 2004, which may be applicable to the prison context:

- s.22(4)(b) – the person has agreed to the disclosure
- s.22(4)(d) – the disclosure is in accordance with an order of a court or tribunal
- s.22(4)(e) - the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal
- s.22(4)(f) – the disclosure is for the purposes of preventing or investigating crime
- s.22(4)(i) – the disclosure is in accordance with an Order under s.22(5), currently this is the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005 which allows disclosure for, amongst others, purposes of obtaining legal advice, religious purposes, medical purposes.
- s.22(4)(j) – the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.
- A new exception was added under s.22(5) in October 2021 where the disclosure can be made where it is necessary for offender management purposes. Disclosure made using this exemption should be recorded, including the reason that the disclosure was necessary.

4.72 It is an offence for a person acting in an official capacity who has gained protected information relating to a person's application for a GRC or information concerning the gender identity history of a successful GRC applicant to disclose the information to any other person unless an exemption applies (Gender Recognition Act 2004, s22). All information sharing must be compliant with the GRA 2004, the GDPR and the DPA 2018.

Provide an opportunity for individuals to declare the gender with which they identify

4.73 Arrangements must be in place to provide individuals with an opportunity to declare the gender with which they identify, which may be different to their legal or birth gender. If disclosed, self-identified gender identity must also be recorded (in addition to the legally recognised gender, where this is different) and the policy framework applied as set out in this document.

Voluntary Agreements

4.74 The provision of a Voluntary Agreement (VA) is to support consideration of privacy, dignity, well-being including (where relevant) searching, mandatory drug testing and personal care. All those who self-declare that they are transgender must be offered a VA at the earliest opportunity.³³

4.75 The VA must be consistent with the overall sentence plan and must not record whether or not a person has obtained a GRC or any confidential medical or anatomical information, unless the individual consents.

- 4.76 Any VA agreed with transgender individuals must take account of, and be consistent with, prison rules, licence conditions, sentences of the court and the national and local AP Rules.

Adult Prison Estate

- 4.77 Prisoners must generally be held according to their legal gender unless a Complex Case Board agrees otherwise (see Allocation section from 4.6 for details and exceptions to this). If an individual is found to have been located in a way which sits outside of the allocation criteria set out at 4.6-4.8 without the agreement of a Complex Case Board (and a documented exemption, where required), an urgent referral must be made to the Central Operational Framework Team for a Complex Case Board to consider the case. The prison must assure itself, ahead of the Complex Case Board convening, that a full local assessment of risk (from others, to others and to self) has been completed and that all immediate risks are being managed. A transfer must be arranged as soon as possible if required by a Complex Case Board (unless there are specific instructions to do otherwise determined through the CCB).
- 4.78 Whilst the most appropriate location for the prisoner is being considered, they must be held in a suitably supportive environment and a risk of harm assessment must be completed. However, every effort must be taken to avoid isolation of transgender individuals where this is not a proportionate way to manage risk (such as in Care and Separation Units). The risk-assessed daily regime must be structured to ensure that all the requirements for minimum standards, facilities and activities are met in accordance with the Prison Rules 1999 and Prison Act 1952. This would include access to exercise and recreation and planned, supervised contact with other, trusted prisoners.

Care and management of transgender women and women who have gained a GRC

- 4.79 All transgender individuals with a GRC must be referred to the Central Operational Frameworks Team (HMPPStransgender@justice.gov.uk) for a paper review of the case, and to consider whether further escalation to a CCB is required.
- 4.80 The Gender Recognition Act 2004 section 9 says that when a full GRC is issued to a person, the person's legal gender becomes, for all purposes, their acquired gender. Where it is assessed as not being appropriate to hold them in a prison or AP that matches their legal gender, their gender identity must still be respected in all other ways and every effort must be made to ensure access to gender-appropriate services, facilities and items which allow their gender identity expression.
- 4.81 HMPPS may designate a unit (or units) to hold transgender prisoners separately where this is assessed as necessary under this policy. These units will primarily provide accommodation for transgender women with GRCs who cannot be located in the general women's estate. Prisoners without a GRC will only be held on such units where a Complex Case Board consider the circumstances to be exceptional. Prisoners located on any such unit will follow a personalised regime, with access to activities within the main prison regime being risk-assessed on an individual basis. Currently, this accommodation is provided via E Wing at HMP Downview.
- 4.82 A prisoner's placement on such a unit will be reviewed by a Complex Case Board as necessary. Local Case Boards will be held every 2 months (or more frequently if needed) and can request that a Complex Case Board is held at any time where they deem there has been a significant change in the prisoner's risk or circumstances.
- 4.83 When considering whether to hold a transgender woman with other prisoners in the men's or women's estate, or in separate accommodation, all risks need to be taken into account. Any significant risks posed by a transgender woman to others, or by others to the individual,

should be assessed in order to make sure that appropriate accommodation, regime and supervision is provided to manage such risks appropriately.

- 4.84 In some circumstances, it may then be necessary to locate a transgender woman with a GRC in the men's estate. If a transgender woman with a GRC must be placed in the men's estate, she must be treated as a female prisoner in the men's estate. She must be held separately and according to a women's regime must be risk assessed on an individual basis, with the safety of the woman, and of the prisoners she may associate with, being of central concern. In some cases, it may be possible to allow the transgender woman with a GRC to access the regime together with other transgender women without GRCs or with men. This provision exists as the men's estate has greater capacity to manage individuals in custody who pose an exceptionally high risk of harm to others.
- 4.85 Local and Complex Case Boards must not treat a transgender woman with a GRC less favourably than a non-transgender woman, and vice versa for a transgender man with a GRC, except for where doing so permitted under the Equality Act 2010. However, all risks of with respect to their management, as set out in section 4.27 above, must be considered with referrals made to the Complex Case Board where the case meets any of the criteria set out at 4.45.

Transgender men (Female to Male)

- 4.86 All transgender individuals with a GRC must be referred to the Central Operational Frameworks Team (HMPPStransgender@justice.gov.uk) for a paper review, and to consider whether further escalation to a CCB is required.
- 4.87 Local and Complex Case Boards must not treat a transgender man with a GRC, regardless of whether they have had gender affirmation surgery, less favourably than a non-transgender man, except for where doing so permitted under the Equality Act 2010. However, all risks to or from a transgender man with a GRC must be taken into account with respect to his management, as set out in section 4.27 above.
- 4.88 For a decision on allocation, a referral must be made to a Complex Case Board who will consider all risk and safety factors.

Younger individuals (18-21) who are transgender in adult custody

- 4.89 The care and management of younger transgender individuals in custody who express a desire to transition or propose to live permanently in the gender they identify with, must be consistent with the duty to promote their wellbeing.
- 4.90 Younger transgender individuals may be particularly vulnerable and specific risks may be exacerbated by living within a custodial environment, including risk of self-harm and an enhanced risk of sexual exploitation. All known risk factors must be thoroughly considered via a Case Board to review location decisions and develop a care and management plan.
- 4.91 All cases relating to individuals in the adult estate under the age of 21 be referred to the Central Operational Frameworks Team (HMPPStransgender@justice.gov.uk). This is due to the fact that younger individuals in custody may not have had the opportunity to gather sufficient evidence of living in the gender they identify with and they are precluded from the GRC application process until the age of 18 years.

Healthcare

- 4.92 Data relating to physical or mental health conditions is sensitive personal data (as well as biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation) and must be processed in accordance with the provisions of the General Data Protection Regulation and Data Protection Act 2018.
- 4.93 If medical treatment for gender incongruence is commenced before reception/induction into prison or youth secure estate, and the individual applies for it to be continued, it should be continued until the person's gender identity specialist has been consulted on the appropriate way to manage the individual's treatment.
- 4.94 Establishments must ensure that individuals who have been diagnosed with gender incongruence have access to the same quality of care (including counselling, pre and post-surgical care and continued access to hormone treatment) that they would expect to receive from the NHS if they had not been sent to prison or youth custody.
- 4.95 HMPPS may not undertake compulsory blood tests under the Prison Act 1952 or Prison Rules 1999 to confirm compliance with hormone or other gender reassignment medical interventions. However, an individual may offer confirmation of their compliance with hormone and other treatment to support their application to be allocated within a women's or a men's prison on a voluntary basis.

Gender Incongruence and medical pathways:

- 4.96 At the request of the individual, the establishment GP would make a referral to a Specialist Gender Identity Clinic. The prison must inform the relevant NHS commissioning authority of any request from a prisoner or young person (whether remanded or sentenced) to begin medical treatment for gender dysphoria and request a contact point for liaison purposes.

Applications for Gender Affirmation Surgery or other treatment

- 4.97 The GP must refer all applications for gender affirmation surgery to a specialist (consultant grade) medical professional. Specialised services will ordinarily provide advice about whether gender affirmation surgery is considered appropriate in a particular case.
- 4.98 It may be appropriate for the Governor (alongside the NHS Commissioner) to provide a report to the consultant as to the practical impact within a prison context of any medical decision.
- 4.99 Applications for reversal of gender affirmation surgery must be dealt with through full reference to the gender identity specialist and psychiatrist familiar with the case.
- 4.100 All transgender individuals are entitled to equivalence of access to healthcare provision as they would experience in the community.

Mental Health

- 4.101 Where an individual who is transgender is also thought to have experiences or issues relating to mental health, they should be referred for specialist advice which may include the local healthcare teams or regional psychology team, and a referral to the centrally managed Complex Case Board should be considered. Where an individual is thought to have a personality disorder, a referral must be made to the community Offender Personality Disorder (OPD) service.

Searching of the Person (custody only)

- 4.102 Searching of transgender individuals must comply with Annex A of the Searching Policy Framework for adult prisons, or as per the establishments guidance in the youth secure estate, unless alternative arrangements are agreed as part of a Voluntary Agreement.³⁴
- 4.103 A physical search or examination **must not** be conducted for the purpose of determining birth sex or genitalia.
- 4.104 For individuals in custody who have not obtained legal recognition but who can demonstrate that they live, or intend to live, consistently and permanently in the gender with which they identify (opposite to the sex registered at birth), their view of which gender of prison staff should carry out the searching procedures to be applied to them must be taken into consideration by staff at the earliest opportunity.
- 4.105 Individuals in custody who have a more fluid approach to living in a different gender role (for example individuals who have a changing or shifting gender identity, who cross-dress or are non- binary) will be searched according to their legal gender in accordance with the Searching Policy Framework unless a Voluntary Agreement has been agreed.
- 4.106 If agreement cannot be reached with the prisoner, this can be referred for further advice from Regional Lead Psychologist, the local Equality Lead, HMPPS Transgender Framework Team or a Local Case Board.

Mandatory Drug Tests

Due to the intimate nature of some mandatory drug tests, the same principles apply to the use of a VA to agree the gender of staff who will complete them.

- 4.107 Individuals in custody who have a more fluid approach to living in a different gender role (for example individuals who have a changing or shifting gender identity, who cross-dress or are non- binary) will be searched according to their legal gender in accordance with the Searching Policy Framework unless a Voluntary Agreement has been agreed.
- 4.108 If agreement cannot be reached with the prisoner, this can be referred for further advice from Regional Lead Psychologist, the local Equality Lead, HMPPS Transgender Team or a Local Case Board.

Care and Separation

- 4.109 Particular care should be taken where an individual who is transgender is likely to be located in long-term care and separation as this may have serious mental health consequences for the person. PSO 1700 Segregation contains advice and guidance in relation to promoting and safeguarding the mental health of individuals held in care and separation units. Removal from association under Rule 45 can only lawfully take place when the test in rule 45(1) is met i.e. it is desirable for the maintenance of good order or discipline, or in the prisoner's own interests. The consent of the person to be placed in Segregation would not be a defence on which a Governor could rely. The decision to place the individual in long term care and separation should be made very carefully in accordance with Prison Rule 45 and the policy on segregation. It should be supported by legal advice and reviewed in accordance with the system of segregation reviews as contained in PSO 1700 Segregation.
- 4.110 Where it is necessary to locate an individual, who is transgender in a Care and Separation Unit, notification must be sent to HMPPStransgender@justice.gov.uk within seven calendar days of the decision. Further notification should be sent if an alternative care and

management plan is produced and commenced within seven days.

- 4.111 It is not advisable to use Care and Separation as a method of managing risks to individuals who are transgender. In these circumstances, where possible, the establishment should seek to manage the person in an appropriate supportive environment away from the main regime of the prison whilst sentence management decisions are made. If this is not felt to be possible and risk concerns remain, an urgent referral should be made to a Complex Case Board.

Integration and Interventions in custody

- 4.112 Establishments should strive to enable equal access for adults, children and young people who are transgender consistent with safe methods for managing individuals on normal location, to all services and facilities, including accredited programmes, purposeful activities and other interventions which may assist their sentence plans and reduce re-offending.
- 4.113 Where an individual who is transgender has committed an offence in a different gender and this is relevant to their sentence plan, specialist advice may be gained from the Regional Lead Psychologist, via a Local Case Board or HMPPS Transgender team.
- 4.114 Sentence planning should be supported by a trauma informed approach which will encompass the individual needs and support mechanisms required for those who identify as transgender.

Pre-Release planning and residence in approved premises (AP)

- 4.115 Prior to release, a pre-release Local Case Board is required to inform contingency plans whilst an individual is on their licence period. Probation must be present at this meeting. If the release plan includes residing at an AP, then representation from the AP is also required.
- 4.116 Referrals to AP must clearly record the legal gender of the prospective resident. Prior to AP referrals being accepted, a Local Case Board must be convened by Probation, chaired by a Probation Band 6 Area Manager.
- 4.117 Any transgender woman with any sexual or violent conviction or current charge (see Annex D) and/or who has birth genitalia should be referred to an AP in line with their sex registered at birth unless, by exception, an exemption has been recommended by a Complex Case Board and agreed by the HMPPS Director General and the Secretary of State for Justice.
- 4.118 All other individuals required to reside in an AP must be allocated according to their legally recognised gender unless the Probation local case board determines that the case meets the criteria for a Complex Case Board as detailed in section 4.45, chaired by the Community Interventions Deputy Director³⁵. It is possible to hold a transgender woman with a GRC in a male AP (and a transgender man with a GRC in a female AP).
- 4.119 The majority of AP residents are MAPPA³⁶ eligible and subject to post-release licences. Probation Directors must ensure that release plans to AP are informed by decisions made within the prison estate in relation to the care and management of transgender individuals and follow the principles contained within the guidance for location decisions in custody including:
- Seeking the individual's view of location.
 - Assessing evidence of living in the gender the person identifies with alongside all known risk factors via a Local Case Board and achieving agreement between Probation divisions where necessary.
 - Convening a Local Case Board and providing disclosure.

- 4.120 AP allocation decisions via a Local or Complex Case Board will be used to inform MAPPA meetings and reviews where applicable. Transgender individuals must not be treated differently from other individuals with the same or similar risk profiles in access to opportunities for rehabilitation and reintegration. For MAPPA eligible individuals, MAPPA will make the overriding decision.
- 4.121 For transgender individuals required to reside in APs for a period of bail assessment, a Local Case Board must be convened to determine the appropriate location and consider the safety of all residents.

Healthcare in approved premises (AP)

- 4.122 Transgender individuals residing in APs must have equal access to all healthcare services as any member of the public as reflected in the HMPPS AP Manual.

Multi-Agency Public Protection Arrangements

- 4.123 In the community, Multi-Agency Public Protection Arrangements (MAPPA) eligible individuals who are transgender will be managed via MAPPA. Non-MAPPA transgender individuals presenting a significant level of complex risks and/or needs will be managed under MAPPA arrangements at the discretion of senior managers with support from HMPPS Transgender Team.
- 4.124 Pre-release MAPPA meetings for MAPPA eligible transgender individuals will enable a holistic approach to risk management and sentence planning. This may be especially important for those who have transitioned to the gender they identify with during the custodial term.
- 4.125 All eligible transgender individuals are referred to MAPPA in accordance with the MAPPA Guidance and a meeting convened at least 6 months prior to release to determine the MAPPA management level and to consider all known risk factors to enable the most appropriate and effective risk management plan to be developed by the Offender Manager

Services to Victims (victims of offences specified in Schedule 15 of the Criminal Justice Act 2003)

- 4.126 Victims who are receiving the services of the Probation Victim Contact Service are generally provided with baseline information, such as key stages of a person's sentence. Victims are not generally provided with personal information about the individual and this would include whether a person has transitioned during a custodial sentence³⁷. The Probation must discuss at a MAPPA meeting any case where they consider there is a strong argument for disclosing such information and seek legal advice. Information to victims will be decided on a case-by-case basis in accordance with the with MAPPA Guidance and data protection.

Gender reassignment pathways for individuals in the community

- 4.127 Offender Managers (OMs) must ensure that statutory supervision appointments as part of a post-release licence, community sentence or suspended sentence order do not prevent transgender individuals attending a Gender Identity Clinic (GIC) or other healthcare appointments relating to gender dysphoria. If the location of the GIC is within an exclusion zone, or healthcare appointments are within a curfew time, then consideration should be given to identifying an alternative medical venue. If that is not possible, a licence or sentence variation must be considered by the OM in consultation with the Victim Liaison Officer, and

the VLO informed of the outcome.

Managing community sentences and Interventions

- 4.128 Offender Managers may need to consider the delivery methods for transgender individuals required to complete rehabilitative interventions usually delivered within a binary service (i.e. male or female) such as some accredited programmes or same-sex unpaid work groups. These decisions must be made on a case-by-case basis taking into account all known risk factors.
- 4.129 Transgender individuals must be permitted to present and express themselves in the gender they identify with (or in a gender-neutral way) when completing community sentences and interventions.

Contingency Planning for Recall or Breach of Sentences Resulting in a Custodial Sentence

- 4.130 For those subject to Suspended Sentence Orders, post-release licence, or civil orders which, if breached, could result in a custodial sentence, consideration and contingency decisions are agreed via a Local Case Board, chaired by a prison manager. All decisions must be made on the basis of up-to-date evidence and considerations.
- 4.131 Public Protection Casework Section (PPCS) is to be informed of decisions made by local case boards whilst the offender is in the community. If an offender is recalled back to prison custody, the decision made at this level will be reflected in the PPCS to inform appropriate location instructions.

Electronic Monitoring Services

- 4.132 Providers of Electronic Monitoring must seek the view of all service users who are transgender regarding the gender of staff who fit the device. Individuals who have obtained legal recognition of the gender with which they identify must be managed in accordance with their legal gender.

Complaints

- 4.133 Those who raise complaints about any aspect of their care and management (including decisions made within case boards under the framework of this policy) must be dealt with via the complaints procedures set out in the Prisoner Complaints Policy Framework.
- 4.134 PI 51/2014 contains the HMPPS Probation Standard Complaints Procedure for Probation. Providers delivering services on behalf of HMPPS in the community must demonstrate transparent and robust processes for responding to complaints.

Staff Conduct

- 4.135 Individuals who are transgender and sentenced by the courts continue to attract a high level of media and political attention. Where it is found that staff have provided unauthorised information to the press or on social media, this will be dealt with robustly via the Counter Corruption policy framework. Such behaviour can result in distress and harm to individuals in our care, to victims and to the families of victims.

Records

- 4.136 Records, communications and disclosures must be handled in compliance with the Gender Recognition Act 2004 and in accordance with HMPPS policies Information Risk Management

Policy PSI 06/2016, Information Assurance Policy, PSI 24/2014, and the Data Protection Act 2018 and General Data Protection Regulations, PSI 03/2018.

Legal Requirements³⁸

Gender Recognition Act 2004 (“GRA 2004”)

- 4.137 Section 9 of the GRA 2004 requires that a person who has obtained a Gender Recognition Certificate must be treated in accordance with their acquired gender for all purposes.
- 4.138 Section 22 of the GRA 2004 provides that it is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person unless one of the exceptions in section 22 applies.
- 4.139 Exceptions to the offence of disclosing the information which may be applicable to the prison context are:
- s.22(4)(b) – the person has agreed to the disclosure
 - s.22(4)(d) – the disclosure is in accordance with an order of a court or tribunal
 - s.22(4)(e) - the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal
 - s.22(4)(f) – the disclosure is for the purposes of preventing or investigating crime
 - s.22(4)(i) – the disclosure is in accordance with an Order under s.22(5), currently this is the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005 which allows disclosure for, amongst others, purposes of obtaining legal advice, religious purposes, medical purposes.
 - s.22(4)(j) – the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.
 - s.22(5) was added in October 2021 - the disclosure is necessary for offender management purposes. Disclosure made using this exemption should be recorded, including the reason that the disclosure was necessary.

Equality Act 2010 (EA 2010)

- 4.140 Gender reassignment is a protected characteristic for the purposes of the EA 2010. A person is undergoing gender reassignment if they are “proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex”. This does not require any medical assessment or treatment (except the requirement for a diagnosis of their identified gender).

The EA 2010 prohibits:

- direct discrimination, when a person is treated less favourably than another because they have the protected characteristic of gender reassignment; and
 - indirect discrimination, where a policy is implemented but has the effect of disadvantaging someone due to being transgender.
- 4.141 The EA sch.3 part 7 contains exceptions to the above prohibitions to allow for the provision of services which are single-sex or separated by sex. Paragraph 28 states that a person does not contravene the duty for service-providers not to discriminate against people in relation to gender reassignment where providing a service which is single-sex or separated by sex is a proportionate means of achieving a legitimate aim.
- 4.142 The Public Sector Equality Duty also requires public authorities to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations between persons who share a relevant protected characteristic and persons who do not

shareit.

Article 8 of the European Convention of Human Rights (ECHR)

4.143 Article 8 ECHR protects the right to private life which includes the right to self-determination, to define your identity and to live as yourself. Any interference with the article 8 rights must be in accordance with law, necessary in the pursuit of a legitimate aim and proportionate.

Further information on the legal framework is contained in the operational guidance.

5. Guidance

Operational Supporting Guidance

5.1 Service-specific, supporting operational guidance on the care and management of individuals who are transgender is available as follows for:

- PECS contractors
- Adult prison estate
- Youth Custody Service
- Probation Service – Offender Managers
- Approved Premises

5.2 The HMPPS Transgender Advisory Board advises HMPPS on matters relating to:

- Attention to the **safety and wellbeing of transgender people** in custody or serving a sentence in the community,
- Identifying and promulgating **good practice**, including international examples,
- Recommending where **research** may need to be directed to inform practice or planning,
- The **implementation of the HMPPS-wide instruction** on transgender individuals including monitoring any issues arising from the operational use of new decision-making criteria,
- The **allocation policy of transgender prisoners** (in male and female establishments),
- Other related policies, including the women estate's facilities list, prison uniform and rehabilitative interventions currently based on binary measures and assessments, including improving **data collection**,
- Policies such as those on **non-binary and intersex** people in contact with HMPPS' court-based staff (including those on bail) or held by HMPPS in the custodial estate; and policies relating to **young people and young adults** including those in, or transitioning from, the Youth Secure Estate.

5.3 Any queries on the policy framework or the supporting guidance should be addressed to HMPPStransgender@justice.gov.uk.

ALWAYS ALLOCATE IN LINE WITH THE BELOW THREE POINTS:

No transgender women with a current or previous conviction for a sexual or violent offence (see Annex D) or current charge and/or who have birth genitalia can be directly allocated to the general women's estate.

Transgender women who fall into one or more of these groups will generally be held in a prison which matches their sex registered at birth (those without GRCs), or in separate accommodation within the women's estate (those with GRCs).

All other transgender individuals (transgender women who do not fall into one of the above groups, transgender men and non-binary individuals) must be allocated according to their legal gender.

Pre-Sentence
Report
Adjournment

- Probation SPOC alerts local prison B8 manager.
- Convene Local Case Board (LCB) chaired by B8 prison manager with governor sign off where:
 - an adjournment period allows
 - when custody is a likely sentencing outcome
- Flag case to central team: HMPPStransgender@justice.gov.uk
- Refer to a complex case board (CCB), chaired by a Prison Group Director (PGD), if it is proposed to allocate to a prison which does not match their legal gender or where allocation to the general women's estate is sought for a transgender woman with birth genitalia or sexual or violence offences.
- Where it is not possible to convene a local/complex board during the adjournment, allocate according to the above (in line with legal gender, except where a transgender woman has a sexual or violent conviction or current charge (see Annex D) and/or has birth genitalia – in these cases, allocation must be to the men's estate or separate accommodation in the women's estate, **see 4.6 of the framework**).
- Prison to convene a LCB within 14 calendar days of arrival into custody. Consideration given to criteria for CCB referral.

Remand/
Sentenced
without
adjournment

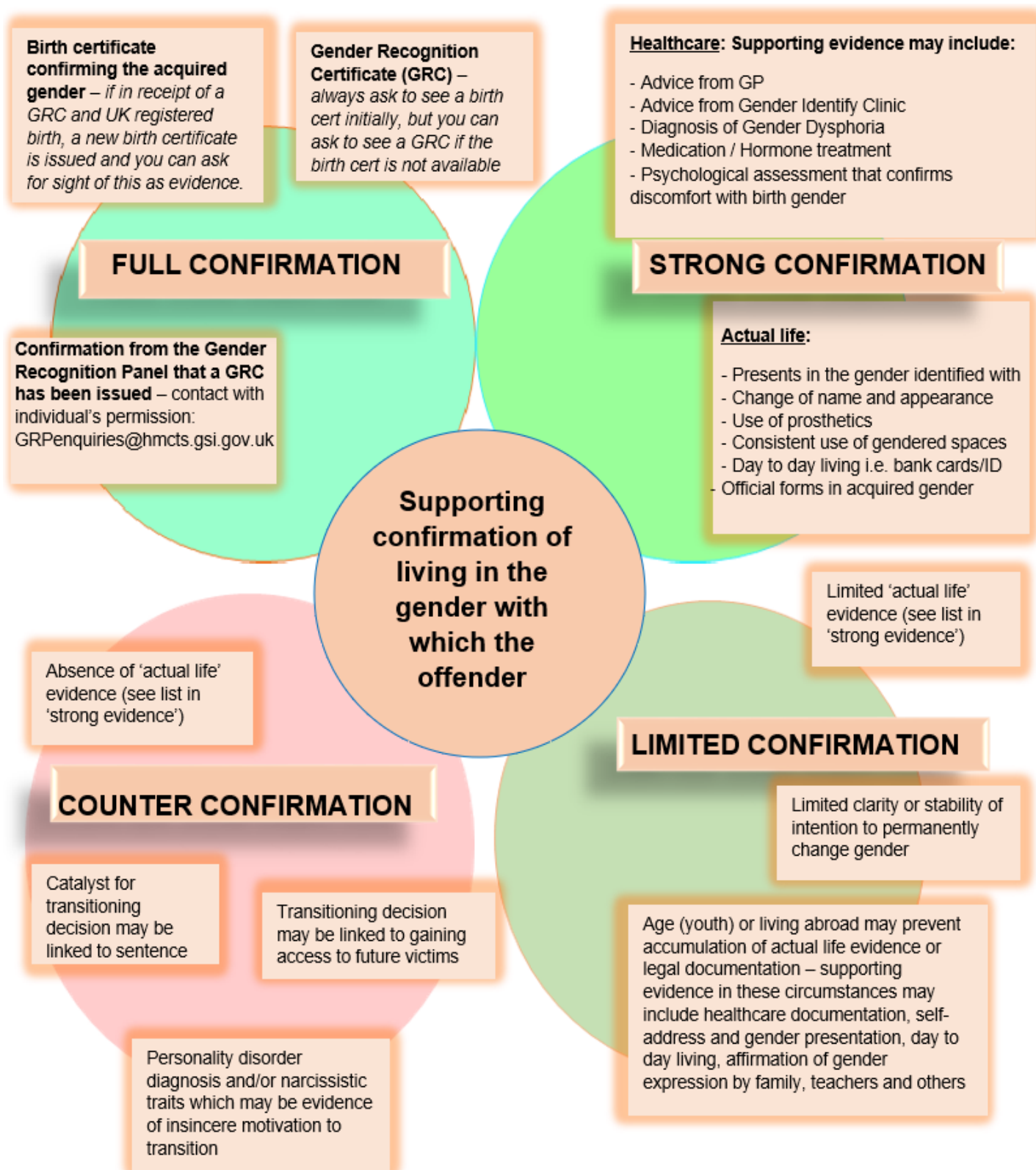
- Allocate according to the above (in line with legal gender, except where a transgender woman has a sexual or violent conviction or current charge (see Annex D) and/or has birth genitalia – in these cases, allocation must be to the men's estate or to separate accommodation in the women's estate, **see 4.6 of the framework**).
- Flag case to central team: HMPPStransgender@justice.gov.uk
- Prison to convene a LCB within 14 calendar days of arrival into custody. LCB to consider criteria for CCB.

Recall or
Breach is
activated

- Allocate according to the above (in line with legal gender, except where a transgender woman has a sexual or violent conviction or current charge (see Annex D) and/or has birth genitalia – in these cases, allocation must be to the men's estate or to separate accommodation in the women's estate, **E**).
- Flag case to central team: HMPPStransgender@justice.gov.uk
- **OR** Where there is a CCB approved contingency plan and no significant change in circumstances, confirm with CCB PGD chair via HMPPStransgender@justice.gov.uk and Governor of the receiving prison to approve any prison allocation decision.
- Where circumstances or risk has changed, allocate according to the above guidance and refer for a Complex Case Board review.

Supporting Confirmation of the Gender with which the Offender Identifies

When an individual discloses that they are transgender, the following chart may assist in assessing the strength of evidence of living in the gender the individual identifies with, to help with location decisions and sentence plans.



OFFENDERS MUST BE PERMITTED TO EXPRESS THEIR GENDER IDENTITY WHETHER OR NOT THEY HAVE ANY SUPPORTING EVIDENCE. HOWEVER, LOCATION DECISIONS TO A PRISON OR AP MUST FOLLOW THE GUIDANCE CONTAINED IN ANNEX A

Category 1: FULL SUPPORTING CONFIRMATION

This is evidence which fully confirms the individual's legal gender. The best form of confirmation is a birth certificate. Staff should ask an individual to produce a birth certificate which will confirm their sex at birth or, if they have received a GRC and were born in the UK, a new birth certificate will have been issued showing the acquired ('new') gender. Asking an individual what is recorded on their birth certificate and requesting sight of this should always be the first step in confirming legal gender.

However, staff can ask for sight of a GRC (or for sight of an application for a GRC) if a birth certificate is not available. Should an individual provide a GRC as evidence, or give permission for the Gender Recognition Panel to confirm that a GRC has been issued and confirmation is received, this must be accepted as full evidence of legal gender. If a person discloses that they have a GRC, or have applied for a GRC, the individual should be asked to provide written consent for information about their previous gender to be disclosed to/from relevant staff in or on behalf of HMPPS. However, if they do not provide consent this information can still be disclosed where necessary for offender management purposes or where any other exemption under s22 of the Gender Recognition Act 2004 applies (see 4.69-4.72). Information about the gender history of an individual with a GRC should be treated carefully, as with any other sensitive information. Disclosure of this information that is not necessary for offender management purposes may amount to a criminal offence.

Driving licences and passports do not confirm legal gender. Only a birth certificate, GRC or confirmation from the Gender Recognition Panel should be accepted.

Category 2: STRONG SUPPORTING CONFIRMATION

Strong supporting evidence may include the length of time the person has been living in the gender they identify with. Care must be taken here in relation to younger people who may not have had the opportunity to demonstrate this due to their age. Other supporting confirmation may be presented as follows:

Healthcare documents - this may include documents from the GP or from a Gender Identity Clinic.

Appearance and mannerisms - this may include clothes, hair style, use of prosthetics, or other items to express gender identity. Care must be taken here as the person may not be confident to appear in court or for a pre-sentence report appointment in the gender they identify with, or may have been remanded into custody and then disclose during the course of their sentence. In these circumstances they may not have gained access to items to express their gender identity.

Evidence of day to day living – this may include bank or other cards, a driving licence or a passport showing a change of name and/or expression of gender identity.

Category 3: LIMITED SUPPORTING CONFIRMATION

This may include similar confirmation to STRONG confirmation but may reflect that a person is in an earlier stage of transitioning or that they have not reached a decision.

For individuals who identify as non-binary, gender fluid or cross dresser and those who are intersex and not intending to transition to a gender opposite to that assigned at birth, they will be located in the part of the prison or AP estate consistent with their legal gender.

Particular care should be given when considering confirmation from younger people and also from foreign national prisoners who may not have had the opportunity or recourse to supporting confirmation.

Category 4: COUNTER EVIDENCE

The wider Ministry of Justice review established that people who are transgender are overwhelmingly genuine about living in the gender with which they identify. It was, however, accepted that, as with other areas of prison life, some people will always attempt to test, exploit or undermine the system. In cases where there is a concern around an individual's sincerity, the confirmation that makes that person's views credible will be examined (including counter-evidence) and application of the decision-making criteria would be able to identify those who may pose a risk to others.

Counter confirmation may include the lack of any supporting evidence of living in the gender with which the person identifies and may be linked to personality disorder, offending profile, sentencing outcomes and/or motivation to undermine the system. Where it is considered that an individual is insincere, this should be clearly recorded and subject to risk, operational and security assessments, and shared with the individual.



Case Board – Advance Disclosure

Section 1: Case Board details *(to be completed by the administrator)*

Date of meeting	
Location	
Dial in details	
Chair	
Invitees	
Apologies	
Type of Board <i>[delete as necessary]</i>	<p>Local Board: Pre-sentence Within 14 calendar days of:</p> <ul style="list-style-type: none"> - reception into custody (remanded or sentenced) - transfer to a new prison (remanded or sentenced) - arrival into Approved Premises Review <p>Pre-release Board Contingency Plan Board</p> <p>Complex Case Board (Prison/Approved Premise)</p>
Date disclosure provided to the individual (must be at least 4 days prior to the meeting)	

Section 2: Details of the Individual who is transgender *(to be completed by the administrator subject to individual giving consent to disclosure)*

To be completed by the administrator and taken from relevant case administration systems (ASSET, PNOMIS, NDelius)

Name (include former aliases)	
Current prison location (if applicable)	
Date of last review (if applicable)	

Section 3: Offending history *(to be completed by the administrator)*

3.1 Index offence (include sentencing details, description of offence, type of offence (eg sexual and/or violence), evidence of coercive control within a relationship, victim group)

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3.2 Previous convictions (include all previous convictions including any breaches or supervision failures)

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Section 4: Assessment of static & dynamic risk (as assessed through the Offender Assessment System (OASys) where available). Chair of the board to allocate this section for completion.

4.1 Risk of serious harm summary

Risk of Serious Harm	Risk in Community	Risk in Custody
To Children		
To Public		
To Known Adult		
To Staff		
To other Prisoners		
To Self ³⁹		

4.3 Areas of risk relevant to the transgender case board

Identified areas of risk from OASys

--

Identified areas of risk from other sources which can be disclosed to the individual:

- previous behaviours which have not resulted in convictions;
- risks of sexual or violent assault to women prisoners where a person is seeking to be located in a women's prison;
- other identified risks to other prisoners and residents
- risks from other prisoners (eg risk of sexual or violent assault) to the individual
- threats from prisoner's families, own family other members of the public impact of any media coverage

4.4 Health care and medication information (to be completed only where relevant to individual case management) and where consent has been given for medical in confidence information to be shared)	
Relevant healthcare information	
Relevant healthcare information from HMPPS staff and prison-based NHS staff (where consent has been provided) including prison psychologists, mental health in reach team, prison GP and/or nursing staff	
Relevant healthcare information from External healthcare staff (where consent has been provided) including GP, Gender Identity Clinic staff	
Areas of risk relating to health relevant to care and management	
Medical risks specific to location in a women's estate (if applicable)	
Medical risks specific to location in a men's prison (if applicable)	
Relevant substance misuse risks	
Mental health issues	
Personality Disorder diagnosis	
Learning difficulties or Autism Spectrum Disorders	
Any other relevant health considerations	
4.5 Other Equalities considerations, including:	
Age <i>(if under 21 years in the adult prison estate, a referral must be made to a Complex Case Board)</i>	
Disability <i>(include mental and physical health)</i>	
Religion or belief	
Race	
Sexual orientation	

Any other equalities considerations/ protected characteristics	
4.6 Voluntary Agreement	
Has a Voluntary Agreement been agreed	Yes / No
If yes, what are the Searching and Mandatory Drug Testing arrangements agreed?	
4.7 Sentence planning recommendations (where applicable)	
4.8 Concerning behaviours <i>(case administration records: interactions with staff, peers, visitors, attitude towards regime and activities)</i>	
4.9 Protective behaviours and factors <i>(positive influences and lifestyle factors [such as contact with family or significant others, education, training, religion], interactions with staff, completion of interventions that improve and may decrease the likelihood of problematic behaviour or future offending)</i>	
Report author name/grade⁴⁰	
Report date	

Section 5: Voluntary Contribution by the transgender person (to be completed by you or by a member of staff on your behalf) or presented verbally at the meeting	
This is your opportunity to express your views of your care and management	
What is your legally recognised gender?	Male/female
What is the gender you identify with?	Male/female or in another way
Are you seeking to transfer to a prison which matches the gender you identify with?	Yes/No
What would you like the case board to consider in respect of your care and management?	
If you have applied for legal recognition of your gender via a gender recognition certificate, do you give written express permission for your previous gender and details of the gender	Prefer not to say / Yes /No

recognition certificate application process to be disclosed? In circumstances set out in s 22 of the Gender Recognition Act 2004, the information may be disclosed even if you do not consent.	
Do you give permission for your medical in confidence information to be discussed at the case board which is relevant to care and management decisions which need to be considered? This could be from your GP, Gender Identity Clinic, prison healthcare team, psychologist or psychiatrist.	Yes / No Comments:

Signature and date	Date/...../.....
Name and date of the member of staff if this has been completed on your behalf	Date/...../.....

Section 6: Contributions by other invitees (<i>information to be collated by the administrator</i>)		
Role	Summary of information provided to the Board and disclosed to the individual	Report Author⁴¹ and date
Establishment Psychologist/ with Regional Psychologist Lead oversight	<ul style="list-style-type: none"> <i>What reports, risk assessments, information is going to be shared at the board?</i> 	Report Author
		Report date
Safer Custody Manager		Report Author
		Report date
Offender Manager or Pre-sentence report author		Report Author
		Report date
		Report Author

Healthcare (prison healthcare, GP, Gender Identity Specialist)		Report date
Offender Supervisor		Report Author
		Report date
Other invitee		Report Author
		Report date

7a Disclosable intelligence

Staff to note that any intelligence in this section WILL be provided to the offender. Non-disclosable intelligence should go in section 7b below.

Area of Intelligence	Overview of intelligence

Section 7b: Non-Disclosable information and intelligence – to be completed by custody Security departments, from Information Not to Be Disclosed to the Offender (INTBDTO) sections in OASys, other third party information

7b Non-disclosable intelligence (any information that cannot be included in 7a of this report. Information included in this section must be of a restricted or sensitive nature and as such would **not be disclosed** under the Data Protection Act 2018).

Area of intelligence	Overview of intelligence

Gist of the intelligence above that must be disclosed to the individual:

Area of Intelligence	Gist

Report author name/grade	
Report author signature	
Report date	

Policy framework and Operational Guidance can be found [here](#)

Sexual or Violent Offences

Sexual Offences

The offences listed below constitute sexual offences, such that a transgender woman who has a current or previous conviction and/or current charge for any of these offences should not be held in the general women's estate, unless an exemption is authorised by the HMPPS Director General and the Secretary of State for Justice.

The offences are from the "sexual offences" offence group in the [Offence Classification Index \(May 2016\)](#).

- Sexual assault on a male aged 13 and over
- Sexual assault on a male child under 13
- Rape of a female aged 16 and over
- Rape of a female child under 16
- Rape of a female child under 13
- Rape of a male aged 16 and over
- Rape of a male child under 16
- Rape of a male child under 13
- Rape of a female - multiple undefined offenders
- Rape of a male – multiple undefined offenders
- Sexual assault on a female aged 13 and over
- Sexual assault on a female child under 13
- Sexual activity involving a child under 13
- Causing sexual activity without consent
- Sexual activity involving child under 16
- Incest or familial sexual offences
- Sexual activity etc. with a person with a mental disorder
- Abuse of children through sexual exploitation
- Abuse of a position of trust of a sexual nature
- Sexual grooming
- Other miscellaneous sexual offences
- Unnatural sexual offences
- Exposure and voyeurism

Violent Offences

The offences listed below should be considered violent offences, such that a transgender woman who has a current or previous conviction and/or current charge for any of these offences should not be held in the general women's estate, unless an exemption is authorised by the HMPPS Director General and the Secretary of State for Justice.

The offences are from the subgroups of "homicide", "violence with injury", "violence without injury" and "stalking and harassment" within the "violence against the person" offence group in the Offence Classification Index.

The below list of violent offences is not exhaustive. Any other offence involving physical violence, or intent to cause serious harm or endanger life, should be considered a violent offence such that a transgender woman with a conviction and/or charge for that other offence should not be held in the general women's estate (unless an exemption is authorised).

The offences of infanticide and corporate manslaughter are included in the "homicide"

subgroup in the Offence Classification Index but are not included in the below list because a non-biological female cannot be liable for infanticide and an individual cannot be liable for corporate manslaughter.

- Murder
- Attempted murder
- Conspiracy to murder
- Threats to kill
- Manslaughter
- Intentional destruction of a viable unborn child
- Causing or allowing death or serious physical harm to a child or vulnerable person
- Assault with intent to cause serious harm
- Endangering life
- Harassment
- Racially or religiously aggravated harassment
- Assault with injury
- Racially or religiously aggravated assault with injury
- Stalking
- Malicious communications
- Assault with injury on a constable
- Assault with injury on an emergency worker (other than a constable)
- Controlling or coercive behaviour
- Cruelty to children/young persons
- Child abduction
- Procuring illegal abortion
- Kidnapping and false imprisonment
- Assault without injury on a constable
- Assault without injury
- Racially or religiously aggravated assault without injury
- Modern slavery
- Any other offence that, on its facts, involves physical violence, or intent to cause serious harm and/or endanger life.

Notes

- ¹ A glossary of terms and definitions is provided in the supporting operational guidance.
- ² These individuals would not routinely require a transgender case board but may benefit from a Voluntary Agreement to assist with wellbeing and gender expression
- ³ Prisoners who are currently living in, or are presenting in, a gender different to their sex recorded at birth and who have had a local case board (as defined by this framework), as known to individual prisons.
- ⁴ From the 2018 data collection, prisoners were asked about their legal gender. For earlier years the gender is self-reported on reception to the prison and based on information recorded on central administrative databases. It is not possible to determine if this is the legal gender or whether the gender has changed. Prisoners are asked how they self-identify their gender.
- ⁶ Bashford, J; Hasan, S; Marriott, C and Patel, K (2017) *Inside Gender Identity: A report on meeting the health and social care needs of transgender people in the criminal justice system*. Bradford: Community Innovations Enterprise
- ⁷ Brooke, J.M., Biernat, K., Shamaris, N. & Skerrett, V. (2022) The experience of transgender women prisoners in a male prison: A systematic review and meta-synthesis. *The Prison Journal*, Vol. 102(5), 542-564.
- ⁸ See supporting operational guidance for more information relating to relevant legislation.
- ⁹ As a minimum complete online eLearning module
- ¹⁰ Or equivalent grade
- ¹¹ See supporting operational guidance
- ¹² In Youth Custody Service these are referred to as Multi-Disciplinary Meetings.
- ¹³ Or equivalent grade
- ¹⁴ See service specific guidance for PECS contractors
- ¹⁵ Those who are Intersex or identify as gender-fluid or cross-dresser will be managed in part of the estate matching their legally recognised gender and be supported to express their gender via a Voluntary Agreement
- ¹⁶ In YCS this is known as a Multi-disciplinary Board
- ¹⁷ See supporting operational guidance for further information on confirmation on gender identity
- ¹⁸ Referral forms are contained in the operational supporting guidance
- ¹⁹ Risk assessments based on a case-by-case basis. Not all risk factors would be relevant in every case
- ²⁰ Whenever discussing anatomy in relation to an individual's genitalia be sure to be respectful and decent. All discussions need to be defensibly related to care and risk management.
- ²¹ As above
- ²² Where a person has a GRC, their acquired gender becomes their legally recognised gender. See section on disclosure.
- ²³ For YCS this is simply known as a Multi Disciplinary Board. For further information see YCS operational guidance
- ²⁴ See Annex A for a flow chart of when a local or a Complex Case Board is required.
- ²⁵ See Service specific guidance for Youth Custody Service
- ²⁶ Those at risk of custody, in consultation with the Probation transgender SPOC, include individuals:
 - where a court has adjourned for a pre-sentence report to be prepared and a custodial sentencing outcome is likely
 - who may be subject to a sentence where custody may be invoked (eg following breach of a sentence which could result in a custodial sentence or following recall to custody)
- ²⁷ Or equivalent grade
- ²⁸ See operational guidance for more information on recording of names and examples of supporting case law
- ²⁹ Rule 12(1) of the prison rules 1999 requires that women prisoners shall normally be kept separately from male prisoners.
- ³⁰ HMPPStransgender@justice.gov.uk
- ³¹ Contact details for the Gender Recognition Panel: tel 0300 1234 503 or GRPenquiries@hmcts.gsi.gov.uk
- ³² Supporting operational guidance provides a template for recording consent.
- ³³ Supporting operational guidance provides a template for a VA
- ³⁴ See operational supporting guidance for prisons and YCS.
- ³⁵ Or equivalent grade
- ³⁶ Multi Agency Public Protection Arrangements
- ³⁷ Chapter 6 of the Victim Contact Scheme Guidance Manual (PI 48/2014) sets out the policy in respect of disclosing personal information or other information above the baseline
- ³⁸ See supporting operational guidance for details of the legal frameworks that apply.
- ³⁹ Use all known wider sources of information available
- ⁴⁰ Report Author credentials – description of your qualifications, experiences, client groups you have worked

with and where you worked with them, role and training completed. Knowledge of and contact with the prisoner

⁴¹ Report Author credentials – description of your qualifications, experiences, client groups you have worked with and where you worked with them, role and training completed. Knowledge of and contact with the prisoner