

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

Reference: N/A

Re-Issue Date: 27 January 2020 **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 Transgender 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 Transgender Case Board, as set out in paragraphs 4.39 to 4.43 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 Transgender Case Boards to be chaired by an operational prison manager band 8 or higher as stated in paragraphs 4.28 to 4.30. 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 NPS Approved Premise allocation, as stated in paragraphs 4.34 to 4.38. 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"/> | National Probation Service | <input checked="" type="checkbox"/> | Community Rehabilitation Companies (CRCs) |
| <input checked="" type="checkbox"/> | HMPPS Rehabilitation Contract Services Team | <input checked="" type="checkbox"/> | HMPPS-run Immigration Removal Centres (IRCs) |
| <input checked="" type="checkbox"/> | Other providers of Probation and Community Services | <input checked="" type="checkbox"/> | Under 18 Young Offender Institutions |

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 a balanced 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, National 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 Divisional Directors of Probation (DDPs) 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 Transgender 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 Equalities 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: Catriona Laing, Deputy Director, Equalities, Interventions and Operational Practice Group.

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 |

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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 the biological sex assigned to them at birth, including those who:
- wish to seek to transition permanently to a new gender;
 - wish to consistently live in the gender with which they identify but do not seek to have this recognised in law;
 - have gained legal recognition of their new gender.
- 1.4 Also included in the scope of this framework are those who identify as transgender but do not seek to acquire a new 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 with a gender (non-binary);
 - have an inconsistent gender identity (gender fluid);
 - are cross dressers (transvestite).
- 1.5 This policy framework builds on the previous instruction (PSI 17/2016) in the following key respects:
- 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 across the men's and women's estates
 - Criteria for CCBs are clearer and more specific
 - Local Transgender 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

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.

- Local Transgender Case Boards to be chaired by a National Probation Service member of staff at (NPS) 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
- All remand prisoners will be initially located in the part of the estate that matches their legal gender until the CCB has approved a transfer.
- CCB process is introduced for NPS 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 ³

- 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 1.6 transgender prisoners reported per 1,000 prisoners in custody). In a snapshot data collection held in April/May 2018 and published in November 2018, there were 139 prisoners currently living in, or presenting in, a gender different to their sex assigned at birth and who had sat a Local Transgender Case Board.

Three 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 - May 2018:

- 44 of the 124 public and private prisons (35%) in England and Wales said that they had 1 or more transgender prisoners. ⁴
- There were 139 prisoners currently living in, or presenting in, a gender different to their sex assigned at birth and who had sat a Local Transgender Case Board.
- Of these, 111 reported their legal gender⁵ as male, 23 reported their legal gender as female and 5 did not state their gender. When asked about the gender the prisoner identified as, 114 identified as female, 19 as male and 6 did not provide a response.

⁴ Prisoners who are currently living in, or are presenting in a gender different to their sex assigned at birth and who have had a case conference (as defined by PSI 17/2016), as known to individual prisons.

⁵ In 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. An initial qualitative review was conducted in the adult men's and women's

- In terms of how they self-identified, 89 gave a response. 27 identified as gender-fluid, 10 as intersex, 4 as non-binary and the remaining 48 gave a 'prefer not to say' response.
- 10 of the 139 prisoners reported their ethnic group as Black, Asian and Minority Ethnic and 128 as White, with 1 unknown.
- There were 42 transgender prisoners in women's prisons. When asked about the gender they identified as, 22 identified as female, 17 as male, and 3 did not provide a response.
- There were 97 transgender prisoners in men's prisons. When asked about the gender they identified as, 92 identified as female, 2 as male and 3 did not provide a response.
- Based on this exercise, there were 1.6 transgender prisoners reported per 1,000 prisoners in custody.

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 low⁶. Where individuals have gained legal recognition, they must be treated in accordance with their legally recognised gender in every respect. 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.

2.4 Emerging HMPPS equality data suggests that most transgender individuals in custody do not seek either:

- legal recognition of the gender with which they identify
- or
- to be located in a prison which does not match their legally recognised gender.

Wider Research Evidence

2.5 In recent years, there have been numerous research reports which indicate that people who are transgender have higher rates of mental health problems, self-harm and suicide.⁷

estate in August and September 2018. Emerging findings indicated that the majority of transgender people in adult custody do not seek:

- legal recognition of the gender with which they identify
- to be transferred to a prison setting which does not match their legally recognised gender
- a small number of individuals serving lengthy prison sentences seek legal recognition and transfer to a prison setting to reflect accordingly their acquired gender.

⁶Individuals may choose not to seek legal recognition for a variety of reasons such as cost, or that it is a complicated and lengthy process etc, <https://www.gov.uk/government/publications/national-lgbt-survey-summary-report>

⁷ 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

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 supported to express the gender (or non-gender) with which they identify, with staff using correct pronouns.
- 3.5 Administrative systems accurately record the legally recognised gender of individuals (or best available evidence where this is not known).
- 3.6 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.
- 3.7 In supporting 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

- 3.8 Individuals who are transgender are treated fairly and decently, with their rights properly respected and managed in accordance with the law.
- 3.9 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 Transgender 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.
- 3.10 Decisions are free from bias, follow a clear, recorded process and are undertaken by staff who have a sound basic awareness of transgender identity⁹.

⁸ See supporting operational guidance for more information relating to relevant legislation.

⁹ As a minimum complete online eLearning module

Training and Expertise

- 3.11 Staff caring for and managing individuals who are transgender have access to training, as well as support and advice from colleagues with expertise.

Monitoring

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

3.13 Other Equalities Considerations

- 3.14 All protected characteristics are considered when making decisions about individuals who are transgender.

4. Requirements

Headline Requirements

- All individuals in our care must be supported to express the gender with which they identify.
- 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 that may influence such decisions.
- However, all individuals who are transgender must be initially allocated to part of the estate which matches their **legally recognised gender** (or best-known evidence where legal gender is not known).
- 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.
- 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 assigned 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.

¹⁰ Or equivalent grade

- 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 Transgender 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 4.92)

Allocation Decisions

- 4.6 It should be explained to all transgender individuals that they must be initially allocated according to their legally recognised gender, or best-known evidence where legal gender is not confirmed. A person may only be placed into a service which does not match their legally recognised gender where this is approved by:
- A transgender 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.
- 4.7 A person remanded into custody must always be initially allocated to an establishment which matches their legally recognised gender, or best-known evidence of legal gender. All known risks need to be taken into account and managed until a Local Transgender Case Board is convened. In particular, where a transgender woman is placed in the male estate, any risks posed to her by male prisoners, or vice versa, must be managed. In addition, where a transgender woman with a GRC is placed in the women's estate, all known or likely risks she may pose to other women in the estate should be managed, with use of separate accommodation where appropriate.

Prisoners Escort Custodial Service (PECS) contractors¹⁴

- 4.8 Following sentence, where legal gender is known (e.g. via a birth certificate), the individual must initially be transferred to the part of the estate consistent with their legal gender, unless a different allocation decision has been made by a transgender case board pre-sentence.
- 4.9 The prison regional office must check to ascertain if either a local or Complex Case Board has taken place. The allocation must be in accordance with the legally recognised gender or best available evidence of legal gender, even where this is contrary to the view expressed by the individual. The only exception is where a Complex Case Board has made an alternative decision. The PECS contractor will alert the Governor and Prison Group Director's office where legal gender cannot be determined and/or there is any risk of harm to the individual and/or to other individuals in custody. A person's legal gender or whether a decision was made based on best available evidence of legal gender must be recorded by the PECS provider who must consult the prison regional office.

¹¹ See supporting operational guidance

¹² In Youth Custody Service these are referred to as Transgender Case Boards.

¹³ Or equivalent grade

¹⁴ See service specific guidance for PECS contractors

- 4.10 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 Transgender Case Boards

- 4.11 Transgender case boards are provided primarily for individuals who seek to live permanently and consistently in a different gender to the sex assigned at birth¹⁵. This policy framework provides two types of transgender case board:
- Local Transgender Case Board¹⁶
 - Transgender Complex Case Board.
- 4.12 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, the Local Transgender Case Board should generally consider how the case should be managed appropriately within that location. However, there may be exceptions where the risk to 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.
- 4.13 Where an individual expresses a view of location that is not consistent with their legally recognised gender, 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 Transgender Case Board. (See Annex B).
- 4.14 Where a Local Transgender 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 part of the estate which does not match their legally recognised gender, 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. 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).
- 4.15 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).
- 4.16 A board will enable decisions to be made 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

¹⁵ Those who are Intersex or identify as gender fluid or cross dresser (transvestite) will be managed in part of the prison estate which matches their legally recognised gender and supported to express their gender via a Voluntary Agreement

¹⁶ In YCS this is known as a Transgender Case Board

¹⁷ See supporting operational guidance for further information on confirmation on gender identity

¹⁸ Referral forms are contained in the operational supporting guidance

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.

- 4.17 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.
- 4.18 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 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
- *Testimony from the individual about a sense of vulnerability, e.g. in a male environment, in a particular prison, or from a particular prisoner or group of other 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 including 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;

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 See above

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

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

- *Birth²², legal 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.

- 4.19 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 the women's estate.
- 4.20 It is not envisaged that a transgender 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 supported to express the gender they identify with following risk, security and operational assessments.

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

- 4.21 Adults, children in the Youth Estate²⁵ and young people in Youth Offending Institutes (remanded or sentenced to custody or required to reside in approved premises) who have a consistent and permanent wish to express a gender different to their legally recognised gender, or who disclose a transgender history, must be informed that a Local Transgender Case Board will be convened to consider their care and management. It may also be suitable to hold a Local Transgender Case Board for individuals who wish to express a different gender less consistently, who are gender fluid, or who cross-dress, if the prison considers that there are relevant issues to discuss about the appropriate management of that case.
- 4.22 Governors must make available an establishment Transgender Single Point of Contact (SPOC) Band 6 or higher or their equivalent in a privately managed prison. The SPOC will alert the nominated operational prison manager (Band 8 or higher deemed competent by the Governor or their equivalent in a privately managed prison deemed competent by the Director)) that a Local Transgender Case Board is required. SPOCs will be responsible for supporting the Chair at an establishment level.
- 4.23 The Local Transgender Case Board must be convened within fourteen calendar days of reception into custody or arrival into approved premises.

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 Transgender Case 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

- 4.24 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 4.39)
- 4.25 A template for disclosure is contained in Annex C where all risk information relating to the individual must be completed. This includes risk of self-harm, risk to others and risk from others.
- 4.26 A care and management plan must be produced at the Local Transgender 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.
- 4.27 A Local Transgender Case Board must be re-convened, 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, and,
 - make arrangements for transfers to other prisons (in accordance with the legal gender of the individual unless a referral is needed to a Complex Case Board as set out below).

Pre-Sentence Local Transgender Case Board

- 4.28 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 who has protection under section 7 of the Equality Act 2010.
- 4.29 An adjournment for a pre-sentence report is an opportunity to propose a sentence to the court that takes account of the person's transgender status. Where custody is a likely sentencing outcome and the court adjournment time allows for a Local 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. Where a Local Transgender 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 decided by a Transgender Complex Case Board, chaired by a Prison Group Director preferably prior to sentence.
- 4.30 NPS 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 Transgender Case Board is required. The SPOC will provide support to the Chair.

Chair and Attendees of Local Transgender Case Boards

A Local Transgender 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

²⁶ Those at risk of custody, in consultation with the NPS transgender SPOC, include individuals:

- where a court has adjourned for a pre-sentence report to be prepared and a custodial sentencing outcome is likely

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 Transgender Case Board in adult custody will typically include the following: (*mandatory attendee)

- *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)
- Prison healthcare (Commissioner and Provider)
- Establishment Psychologist (where this role exists)
- Local Equality Manager/Lead
- GP
- Gender Identity Clinic specialist
- PECS Duty Manager (where relevant)
- HMPPS Equalities team (if required for advice on implementing the policy framework)
- HMPPS Women's team (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.

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

Refer complex cases to a centrally managed Transgender Complex Case Board

- 4.34 The criteria for individuals that must be referred to a transgender Complex Case Board are:
- Where prison/AP allocation is sought 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.

-
- 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)

- For transgender individuals held in the adult estate under the age of 21 years.
- For 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.

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

4.36 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 (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

4.37 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.

4.38 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) transgender case boards

4.39 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.

4.40 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).

4.41 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.

²⁷ Or equivalent grade

4.42 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.

4.43 If this information is withheld, a “gist” (i.e. a summary) of the information must be provided.

Support gender expression

4.44 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.

4.45 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

4.46 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.

4.47 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

4.48 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.

4.49 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

4.50 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)

²⁸ See operational guidance for more information on recording of names and examples of supporting case law.

services are provided²⁹. Individuals who have gained legal recognition of their gender via a gender recognition certificate (GRC) can be issued with a new birth certificate in their acquired gender if their birth was registered in the UK.

- 4.51 Where a person's gender is determined, the legal gender must be recorded on all case administration systems where 'sex' (male or female) is required.
- 4.52 Where 'sex' cannot be determined, staff must use the best information available, consulting with equality leads as necessary³⁰. Staff should avoid asking to see a GRC but instead 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 gender. A GRC is an acceptable form of proof of sex, if produced voluntarily. If an individual cannot produce a birth certificate, and have not chosen to provide 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
- 4.53 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

- 4.54 All individuals who disclose that they have applied for, or have gained, a GRC must be asked to provide written consent for their gender which was assigned at birth, and/or details of the application process, to be disclosed to/from relevant staff in or on behalf of HMPPS³². Consent is entirely voluntary on the part of the individual. 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.
- 4.55 Systems must be in place to maintain records which are compliant with the Gender Recognition Act 2004 and do not identify a different gender or GRC application process where consent has not been given and where exemptions in s22 GRA 2004 do not apply. If consent is withheld, the previous gender and/or details of the application process must not be disclosed unless exemptions under s 22 of the GRA 2004 apply (see Legal Requirements section and supporting operational guidance).
- 4.56 Staff can disclose previous gender 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

²⁹ Rule 12(1) of the prison rules 1999 requires that women prisoners shall normally be kept separately from male prisoners.

³⁰ Sources of advice and support are listed in the supporting operational guidance.

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.

- 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.

4.57 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 history of a successful GRC applicant to disclose the information to any other person. Unlawful disclosure is a criminal offence (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

4.58 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 sex. If disclosed, self-identified gender must also be recorded (in addition to the legally recognised gender where this is different) and the policy framework applied as set out below.

Voluntary Agreements

- 4.59 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
- 4.60 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.
- 4.61 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

- 4.62 If an individual is placed in part of the prison estate opposite to their legally recognised gender, a transfer must be arranged as soon as possible following a decision by a Transgender Complex Case Board (unless there are specific circumstances to do otherwise determined through a Transgender Complex Case Board). 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 (such as in Care and Separation Units or in in-patient healthcare units when there is no clinical justification). 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.
- 4.63 Prison Rule 12(1) provides that "Women prisoners shall normally be kept separate from male prisoners". Unless determined otherwise by a Complex Case Board expressly convened for

³³ Supporting operational guidance provides a template for a VA

the purpose of determining the most appropriate location, prisoners must be located according to their legal gender.

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

- 4.64 The Gender Recognition Act 2004 section 9 says that when a full GRC is issued to a person, the person's gender becomes, for all purposes, their acquired gender. This means that transgender women prisoners with GRCs must be treated in the same way as biological women for all purposes. Transgender women with GRCs must be placed in the women's estate/AP unless there are exceptional circumstances, as would be the case for biological women.
- 4.65 When considering whether to hold a transgender woman with a GRC with other women, or in separate accommodation, all risks need to be taken into account. Any significant risks posed by a transgender woman with a GRC to other women, or by other prisoners to the individual, should be assessed in order to make sure that appropriate accommodation, regime and supervision is provided to manage such risks appropriately.
- 4.66 If risk is particularly high, it may not be appropriate to hold a transgender woman with a GRC in the women's estate, either with the general population, or on a bespoke unit.
- 4.67 It may then be necessary to locate a transgender (male to female) woman with a GRC in the men's estate. This can only happen if the risk concerns surrounding the transgender individual are at the equivalent level to those that would apply to any other women that may need to be held in the male estate.
- 4.68 If a transgender woman with a GRC must be placed in the male 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 as set out in the Women's Policy Framework. 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.
- 4.69 Local and Complex Case Boards must not treat a transgender woman with a GRC less favourably than a biologically female person, and vice versa for a transgender man with a GRC. However, all risks of a transgender woman with a GRC must be taken into account with respect to her management as set out in section 4.18 above.

Where a Complex Case Board is asked to consider medical records

- 4.70 Medical records are confidential information which can only be shared with third parties if the person consents. A prisoner has the right to not share their medical records and this should not have a negative impact on the decision of the Complex Case Board. If the board does not have access to any medical information, the person's risk will have to be assessed in the usual way based on other information. The fact that a person has certain biological characteristics or is reluctant to engage in hormone treatment should not be conclusive as to their location, as all relevant risks must be considered.

Transgender men (Female to Male)

- 4.71 Local and Complex Case Boards must not treat a transgender man with a GRC who is either pre-operative or has elected not to pursue any reassignment surgery, less favourably than a biological male. 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 4.18 above. For a decision on

allocation, a referral must be made to a Complex Case Board who will consider all risk and safety factors.

- 4.72 A transgender man with a GRC must not be refused a transfer to the men's estate, if they request it. This is because there is no legal basis for preventing a man's location in the men's estate. Appropriate accommodation in the men's estate should be considered if appropriate to manage any relevant risks.

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

- 4.73 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.
- 4.74 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 Transgender Case Board to review location decisions and develop a care and management plan.
- 4.75 Whilst this policy applies equally to younger individuals, it is recommended that in this context, a case involving anyone in the adult estate under the age of 21 be automatically referred to Complex Case Board. 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

- 4.76 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.
- 4.77 If medical treatment for gender dysphoria 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 specialist has been consulted on the appropriate way to manage the individual's treatment.
- 4.78 Establishments must ensure that individuals who have been diagnosed with gender dysphoria have access to the same quality of care (including counselling, pre-operative and post-operative 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.
- 4.79 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 Dysphoria and medical pathways:

- 4.80 At the request of the individual, the establishment GP would make a referral to a Specialist Gender Dysphoria 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 Reassignment Surgery or other treatment

- 4.81 The GP must refer all applications for gender reassignment surgery. A specialist (consultant grade) medic with specialised services will ordinarily provide advice about whether gender affirmation surgery is considered appropriate in a particular case.
- 4.82 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.
- 4.83 Applications for reversal of gender reassignment surgery must be dealt with through full reference to the gender dysphoria specialist and psychiatrist familiar with the case.
- 4.84 All transgender individuals are entitled to equivalence of access to healthcare provision as they would experience in the community.

Mental Health

- 4.85 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 psychologist, and a referral to the centrally managed transgender 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)

- 4.86 Searching of transgender individuals must comply with the policy and guidance contained in Annex H of PSI 07/2016 Searching of the Person for prisons, or as per the establishments guidance in the youth secure estate, unless alternative arrangements are agreed as part of a Voluntary Agreement.³⁴
- 4.87 A physical search or examination **must not** be conducted for the purpose of determining gender.
- 4.88 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 assigned 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.

³⁴ See operational supporting guidance for prisons and YCS.

- 4.89 Individuals in custody who have a more fluid approach to living in a different gender role (for example individuals who have an inconsistent gender identity, who cross-dress or are non-binary) will normally be searched according to their legal gender in accordance with PSI 07/2016 Searching of the Person unless a Voluntary Agreement has been agreed.
- 4.90 If agreement cannot be reached with the prisoner, this can be referred for further advice from Regional Lead Psychologist, the local Equality Lead, HMPPS Equalities Team or a Local Transgender Case Board.

Mandatory Drug Tests

- 4.91 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.

Care and Separation

- 4.92 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.
- 4.93 Where it is necessary to locate an individual, who is transgender in a Care and Separation Unit, a referral to the centrally managed transgender Complex Case Board must be made within seven calendar days of the decision. This referral may be withdrawn if an alternative care and management plan is produced and commenced within seven days.
- 4.94 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.

Integration and Interventions in custody

- 4.95 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.
- 4.96 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 Transgender Case Board or HMPPS Equalities team.

- 4.97 For children and young people 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)

- 4.98 Prior to release, a pre-release Local Transgender 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.
- 4.99 Referrals to AP must clearly record the legal gender of the prospective resident. Prior to AP referrals being accepted, a Local Transgender Case Board must be convened by NPS, chaired by an NPS Band 6 Area Manager.
- 4.100 All individuals required to reside in AP must be allocated according to their legally recognised gender (or best available evidence where legal gender is not confirmed) unless the case meets the criteria for a Complex Case Board as detailed in section 4.30, 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) where the appropriate balance of risks requires this.
- 4.101 The majority of AP residents are MAPPA³⁶ eligible and subject to post-release licences. NPS 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 Transgender Case Board and achieving agreement between NPS divisions where necessary.
 - Convening a Local Transgender Case Board and providing disclosure.
- 4.102 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.
- 4.103 For transgender individuals required to reside in APs for a period of bail assessment, a Local Transgender Case Board must be convened to determine the appropriate location and consider the safety of all residents.

Healthcare in approved premises (AP)

- 4.104 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.

³⁵ Or equivalent grade

³⁶ Multi Agency Public Protection Arrangements

Multi-Agency Public Protection Arrangements

- 4.105 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 equality team.
- 4.106 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.
- 4.107 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)

- 4.108 Victims who are receiving the services of the NPS 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 NPS 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

- 4.109 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

- 4.110 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.

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

- 4.111 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

- 4.112 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.
- 4.113 Public Protection Casework Section (PPCS) is to be informed about decisions made by the 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

- 4.114 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

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

Staff Conduct

- 4.117 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

- 4.118 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”)

- 4.119 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.
- 4.120 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.
- 4.121 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.

Equality Act 2010 (EA 2010)

- 4.122 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 gender dysphoria) and includes those who have decided to live as the opposite sex and “pass” as the opposite sex without any medical interventions.

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.
- 4.123 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 share it.

³⁸ See supporting operational guidance for details of the legal frameworks that apply.

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

- 4.124 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
 - National 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 requiring further development, including 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@noms.gsi.gov.uk

For all prison allocation decisions, **legally recognised gender or best available evidence are the starting points**, unless a decision to allocate is made by a Complex Case Board

Pre-Sentence Report Adjournment

- NPS transgender Single Point of Contact alerts local prison B8 manager.
- Convene Local Transgender Case Board (LTCB) chaired by a B8 prison manager with governor sign off where:
 - an adjournment period allows
 - when custody is a likely sentencing outcome
- Allocate according to the legally recognised gender or best available evidence.
- Refer to a complex transgender case board (CTCB), chaired by a Prison Group Director (PGD), if it is proposed to allocate to a prison which does not match their legal gender.
- Where it is not possible to convene a board during the adjournment, allocate in accordance with the legally recognised gender or best available evidence and convene a LTCB within 14 calendar days of arrival into custody.

Remanded or sentenced to custody (including prison transfers)

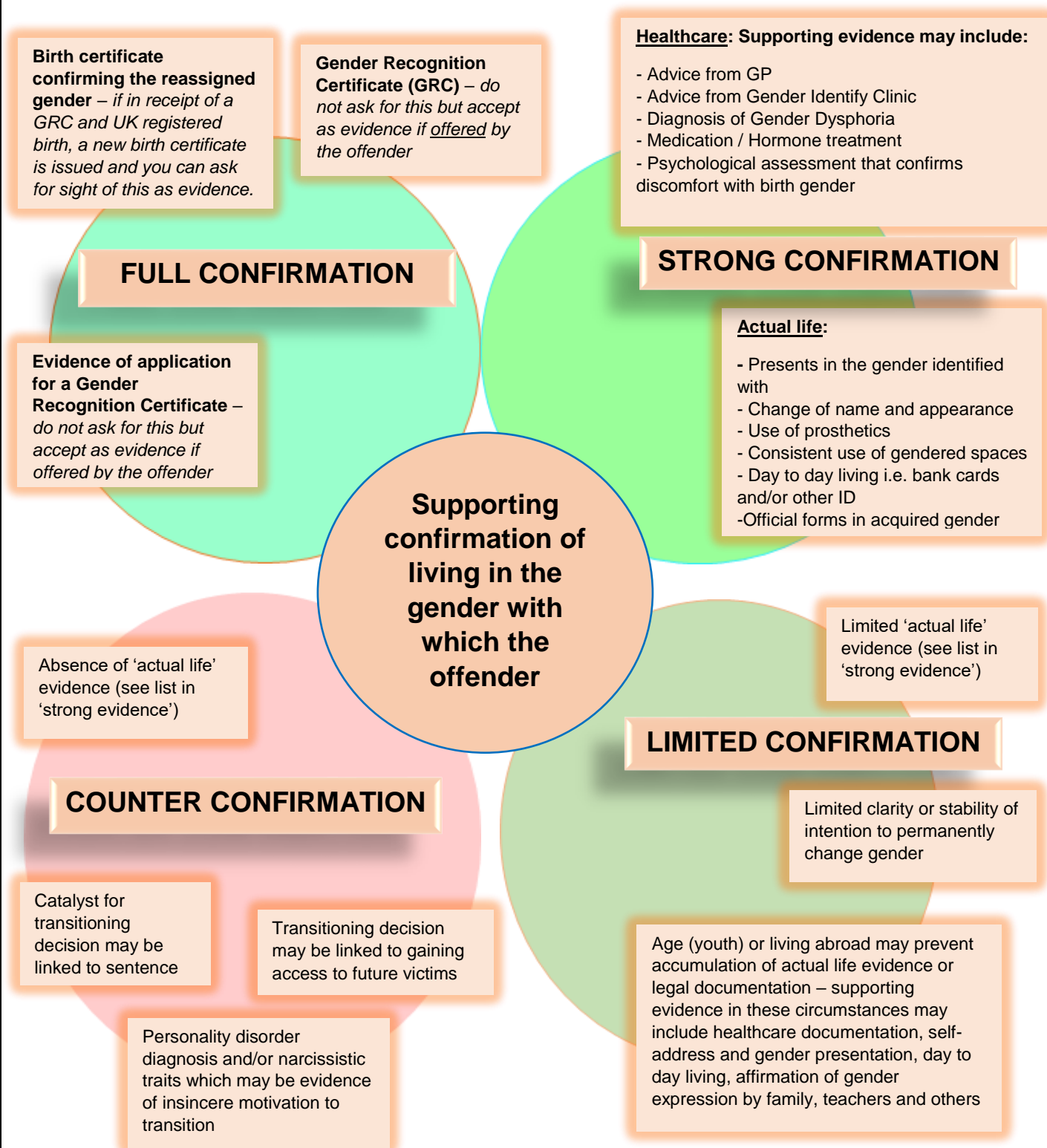
- Allocate according to the legally recognised gender or best available evidence.
- Convene a Local Transgender Case Board within 14 calendar days of arrival into custody.
- Provide disclosure to the individual at least 4 calendar days prior to the board.
- Refer to a CTCB, chaired by a PGD, to propose an allocation to a prison which does not match their legal gender, where a person presents a risk, for those who are under 21 years in the adult estate or where there are risk concerns in relation to allocating to the legally recognised gender

Recall or Breach is activated

- Allocate according to the legally recognised gender or best available evidence.
- OR
- Where there is a contingency plan in place approved by a CTCB, and there has been no significant change of circumstances relating to prison allocation, confirm with the PGD chair of the CTCB and Governor of the receiving prison to approve any prison allocation decision which does not match the legally recognised gender. *(This would include where a person is recalled after having been released from a prison which did not match their legal gender and the risk assessment relating to other prisoners has not changed).*
- Convene a Local Transgender Case Board within 14 calendar days of arrival into custody/ Refer to a CTCB (as above).

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. LOCATION DECISIONS TO A PRISON OR AP WHICH DO NOT MATCH THE LEGAL GENDER CAN ONLY BE MADE FOLLOWING A TRANSGENDER CASE BOARD

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. All staff may 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 'new' gender.

This would be the preferred option. However, staff can ask for sight of a GRC or for sight of an application for a GRC. Should an individual offer 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 must be asked to provide written consent for their gender which was assigned at birth and/or detail of the application process, to be disclosed to/from relevant staff in or on behalf of HMPPS. 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 history of a successful GRC applicant to disclose the information to any other person. Therefore, if consent is withheld, the previous gender and/or details of the application process must not be disclosed unless exemptions under s.22 of the GRA 2004 apply.

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, or a driving licence, 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.

Official sensitive when complete



HM Prison & Probation Service

Transgender Case Board – Advance Disclosure

| Section 1: Transgender Case Board details <i>(to be completed by the administrator)</i> | |
|---|--|
| Date of meeting | |
| Location | |
| Dial in details | |
| Chair | |
| Invitees | |
| Apologies | |
| Type of Board <i>[delete as necessary]</i> | Local Board: Pre-sentence Within 14 calendar days of: <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 Pre-release Board Contingency Plan Board Complex Case Board (Prison/Approved Premise) |
| 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)*

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

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

³⁹ Use all known wider sources of information available

- 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
(if under 21 years in the adult prison estate, a referral must be made to a Complex Case Board)

Disability
(include mental and physical health)

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 transgender 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 |

⁷ 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

| | |
|---|----------------------------------|
| 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. | |
| <p>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?</p> <p>This could be from your GP, Gender Identity Clinic, prison healthcare team, psychologist or psychiatrist.</p> | <p>Yes / No</p> <p>Comments:</p> |

| | |
|---|------------------------|
| 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 (information to be collated by the administrator) | | |
|--|---|--------------------------------------|
| Role | Summary of information provided to the Board and disclosed to the individual | Report Author ⁴¹ 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 |

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

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

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 frameworks can be found here ([insert link to new PSI/PF Guidance](#))