

**UHDB TRUST POLICY FOR CREATING NEW IDENTITIES
RELATING TO THE MANAGEMENT OF HEALTH RECORDS**

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To be read in conjunction with: See Key References section				

In consultation with and Date:	
Trust Operational Group - 210718	
Diversity & Inclusion Committee - 240718	
Information Governance Steering Group (and Caldicott Guardian) - 110518	
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1. Introduction

The law throughout the United Kingdom permits people to change their name at any time and without any special permission or process. This applies to everyone, including people who change their gender. In its simplest form anyone can change their name simply by announcing that fact to everyone who they deal with.

Any change to a patient's original identity, for reasons such as adoption, witness protection or change of gender needs to be handled carefully and sensitively as this action may also be associated with other health, social or safeguarding issues.

2. Purpose

This policy describes and outline processes to be used by staff when creating new patient identities.

3. Background to Current Usual Registration Process

The Personal Demographics Service (PDS) is the national electronic database of NHS patient demographic details such as name, address, date of birth and NHS Number (known as demographic information).

The PDS helps healthcare professionals to identify patients and match them to their health records. It also allows them to contact and communicate with patients.

PDS records are normally created and an NHS number allocated for patients, on, or shortly after, first contact with NHS services, e.g. when registering with a GP. The birth notification service within PDS creates records and allocates NHS numbers for new-born babies. NHS patients have no specific legal right to prevent demographic data being stored on the PDS and the Government has determined that the PDS is the authoritative source of NHS demographic information. The

NHS cannot comply with requests for data not to be held on the PDS. The NHS is required to hold demographic data about its patients in order to:

- Satisfy legal requirements for registers of patients under the care of each GP practice.
- Ensure that each individual presenting for care is ordinarily resident in the UK and therefore eligible for free care.
- Ensure that information about one patient does not become confused with that of another patient.
- Contact patients when they need to attend check-ups etc.

Although demographic data must be held, there are cases where access to a patient's details must be strictly controlled. Access to demographic records can be restricted by any NHS patient who feels that their location details should not be accessible by the NHS or in other situations where vulnerable NHS patients request restricted access. It should also be noted that:

- The PDS does not hold any clinical or sensitive data items such as ethnicity or religion. The PDS is a component part of the Spine (the Spine is the name given to the national databases of key information about patients' health and care).
- The Spine also supports other services, each of them using the Spine's messaging capabilities as part of their own services, such as: the NHS e-Referral Service and the Electronic Prescription Service.
- Information on the PDS is held nationally and accessed by authorised healthcare professionals through their organisation's local system, or by using a secure web-based portal.

Certain people however require extra protection from unauthorised access, e.g. identity protection and domestic violence. Controls are also in place to limit access to patient details that would allow such patients to be contacted. In these cases the patient's address, telephone numbers and GP registration will not be returned from the PDS.

4. Change of name by Deed Poll

A person does not have to follow a legal process to start using a new name, but may need a deed poll to apply for or change official documents like a passport or driving licence.

A deed poll is a legal document that proves change of name, there are two types.

An unenrolled deed poll can be made by anyone over 16 and can be made in person or by a specialist agency or solicitor.

An enrolled deed poll means that a person's new name is on public record. They must be 18 or over.

Changing a child's name is also possible via an application to the Royal Courts of Justice.

5. Transgender Records and Information Sharing

Transgender status forms part of an individual's history but is often not relevant to why they are accessing services.

The Equality Act 2010 defines a person as having the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

This means that an individual does not need to have undergone any specific treatment or surgery to be protected by the law. It is the process that matters.

Trans people have no obligation to disclose whether or not they have a Gender Recognition Certificate or that they have a different gender assigned from birth.

It is important to note that GP surgeries and individual health Trusts have different computer systems. Every effort will be made to encourage patient involvement around the management of their health records.

Any requests for access to trans health records by third parties will be treated with vigilance and consent to release such information must be expressly given by the patient.

Each case therefore will require managing on a case-by-case basis using the principles outlined in this policy.

Records Management for Transgender Patients

Upon receipt of a notification, including a request by the patient, all correspondence should be sent to the Health Records Service Manager.

The Health Records Service Manager will liaise with the patient and coordinate a response regarding relevant records held by the Trust.

The views of the patient will be sought on how they wish their health records to be managed going forwards and to advise the patient of the available options regarding the management of their health record.

The patient should be advised of the importance for treating clinicians of having a patient's full medical history and the reasons for this. If the patient agrees to have all their information included in current health records, written consent is needed from the patient to enable protected information to be contained within the health record and to be disclosed for medical purposes.

If the patient does not wish any previous name or details to be disclosed, a new health record will be generated, with a new NHS Number, once allocated and in this case no reference shall be made in the health record of previous gender or any gender reassignment.

If necessary a summary/chronology will be developed by the appropriate healthcare professional to be available for healthcare professionals. Any summary, which includes reference to transgender status, must be done with

specific consent as each disclosure of this information could otherwise breach the Gender Recognition Act 2004 and may constitute a criminal offence.

There is a risk that the summary/chronology may in itself identify the transgender status of the service user.

The Health Records Service Manager will ensure that the patient receives confirmation of any outcome or any discussed actions via letter or e mail.

Withdrawn legacy paper health records must be held in secure storage by the Health Records Department and will only be accessed with proven authorisation by the patient or clinician providing justification to access the records. The Health Records Service Manager will also coordinate the archive and or sealing of any electronic records. Any Data Protection Act application for subject access to identifiable legacy case notes must be referred to the Health Records Service Manager.

Any application for disclosure of identifiable legacy case notes received from the courts or police must be referred to the Health Records Service Manager.

All correspondence created by trust staff must not refer to previous identity or gender.

Professionals need to adopt a practice of reference to present gender in case note entries. Identity comment should be avoided about transgender status unless this is a specific and immediate issue in treatment. e.g. X is a 47 year old transgender woman should just be recorded as X is a 47 year old woman. Notes should be written referring to transgender status only when this is a specific and immediate issue in treatment. e.g. X is a 47 year old male to female transgender person who requests referral to a Gender Identity Clinic.

Recording of trans status can only be made with specific written consent of the patient. It is most likely to be relevant when recording issues such as past medical/mental health history and/or relationship/family issues.

Specific issues in relation to assessment and treatments for Gender Reassignment

The Health Records Service Manager will be responsible for notifying departmental managers to ensure that agreed changes/archiving is also made to any therapy records or cancer care systems and any other services the patient has received treatment in.

The Health Records Service Manager will be responsible for notifying departmental managers to ensure that the agreed changes are also made to all relevant electronic systems via the Patient Systems Team and/or the Data Corrections Team.

Data Confidentiality

Health records are classified under the Data Protection Act (DPA) as “sensitive personal data.” They must be used and accessed “lawfully, fairly, only if necessary and with explicit consent.” Unless it is a significant threat to life and to protect the “vital interests” of a trans person for example, “sensitive data” may not be divulged to another colleague without consent. Gender Recognition law with its “protected information,” operates in a similar way to the “sensitive personal information” that defines all health records under the DPA 2018. The extreme sensitivity of trans medical records suggests that “implied consent” cannot be assumed; rather that consent must be expressly given. Whilst confidentiality is not absolute and may be overridden by law, public health and the patient concerned, good practice should ensure that the Caldicott Guardian of every acute hospital trust is fully aware of his or her responsibilities, under the GRA 2004, towards transgender people both with and without GRC’s. The personal data of trans people known to the hospital trust has a greater expectation accorded to it that confidentiality will rarely be breached and that when this occurs the trans person has consented to the processing of each and every instance that data is shared.

Any NHS staff may find themselves in situations where they are making serious decisions concerning a trans person. These may be life and death decisions or relatively minor – whatever the nature of the decision, it must be just, fair and

equitable, taking into consideration all the patient's views and concerns. It must also be "proportionate to achieving a legitimate aim". Where the decision itself, or the process, is questioned by the patient, all steps should be taken to reach local resolution on the ward or in the office. If the patient makes an official complaint it will follow the NHS complaints procedure and PALS may become involved. Not all contact with PALS is to process a complaint. The purpose of PALS as the name suggests (Patient Advice and Liaison Service) is also to "advise" and "liaise." All PALS staff have an Article 6 duty and must ensure they give fair and impartial advice.

Summary

- Take care to address your patient by their preferred name and title.
- Respect a patient's request to change the sex indicated on their health records; you don't have to have for a Gender Recognition Certificate or an updated birth certificate.
- Don't disclose a patient's gender history unless it is directly relevant to the condition or its likely treatment. It's unlawful to disclose a patient's gender history without their consent; the gender status or history of trans and non-binary people should be treated with the same level of confidentiality as any other sensitive personal information.
- You may sometimes need to take extra care when speaking to – and recording information about – trans and non-binary people.
- Both electronic and paper health records should clearly indicate your patient's preferred name and title.
- If your patient is to be issued with a new NHS number which has no reference to their gender at birth, you should explain to them that they will not automatically be contacted regarding current or future screening programmes associated with their gender at birth, and discuss the implications of this. Decisions about screening should be made with patients in the same way as any other decisions about their health.

- When communicating with other health professionals, gender history doesn't need to be revealed unless it is directly relevant to the condition or its likely treatment.

***For further details please refer to appendix 3 & 4, SOP for the management of Trans Gender Health Records QHB & RDH**

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6. Adoptions

Background to the General Register Office (GRO) Process

The GRO for England and Wales (a section of the UK Identity & Passport Service) maintains a record of adoptions made on the authority of Courts in England and Wales in the Adopted Children Register. It is from this Register that adoption certificates are issued. The GRO notifies the PDS National Back Office (NBO) of the adoption. The GRO notifies the PDS NBO of their previous GP and the records are transferred to the new identity and forwarded to the child's new GP. A new record on the PDS is created by allocating a new NHS Number for the child. The newly created PDS record contains only the post adoption details, and replaces the child's original PDS record. There must be no link between the child's pre and post adoptive details. The old NHS number is withdrawn so it can no longer be used.

There should be no alert on the record to state that the child is adopted. Locally, the Adoptions Agency involved should ensure that the relevant GP/CCG is informed so that the GP can be provided with a summary of the patient's medical history. GP/CCG should formally inform secondary care organisations of this change.

Currently, when a child has been legally adopted, a new identity is created for the child in place of their existing one (birth record). This includes transferring all relevant health records to the new identity. Although there must be no link

between pre and post adoptive medical records, there needs to be a system in place to retrieve confidential pre adoption health/medical information at such times as deemed necessary. Adoption is a legal process and it transfers all legal rights and responsibilities relating to a child from its birth parent to approved adopters. The birth parent ceases to be the child's parent in law and has no further legal rights and responsibilities in relation to the child. The child receives a new birth certificate and takes on the surname of the adopters once an adoption order has been granted by the courts.

Internal Duties and Responsibilities (upon receipt of formal notification):

The Health Records Service Manager must be notified of any records that need to be reviewed and will co-ordinate the appropriate sealing and archive of such records.

Clinical Staff All clinical staff involved in the care of a child that has been adopted must ensure that there is no reference made to this within the new health record. The relevant clinical lead/s have responsibility for the creation of the clinical summary to be held in the new health record and must ensure that this is contemporaneous and completed within a reasonable timescale to facilitate good clinical care for the child going forward.

Administration Staff Staff who are notified of a change to a child's NHS number are responsible for informing the Health Records Service Manager of this change and ensuring that the child is re registered with a new NHS number. NHS numbers should not be changed in an existing record without further investigation. Any such requests should be flagged to the Data Corrections Team at RDH or the Registration team at QHB. All staff have a responsibility to ensure that confidentiality is not breached in relation to the adoption of a child. This means ensuring disclosure of health records if required follows the Trust procedure for access to health records.

Key Principles When Thinking About Health Records And Adoption

Continuity of the clinical records

The entire historical clinical record should be maintained intact. It is impossible to know today what information will be useful in the future, particularly with medicine advancing so rapidly. Therefore clinical records in the child's original name and NHS number must not be deleted or destroyed outside of current NHS retention guidelines.

Confidentiality

Although most adoptions today are open, it is important to ensure that handling of health records does not inadvertently breach confidentiality, for instance, to a child who does not know they are adopted, or to reveal demographic information or sensitive details/information to an adopted child or young person before they are ready or prepared for it. To help achieve this, avoid the use of 'ADOPTION' in the child's health record with the new identity and new NHS number. The disclosure of the adopted status of a child without consent or appropriate legal gateway would be in breach of the Data Protection Act. Staff are also bound by the Common Law Duty of Confidentiality and Professional Codes of Conduct.

Third party information

It is important to keep in mind that child records may contain family demographic, health and social information. Inadvertent sharing of this information with the child or their adoptive family, without consent from the party of concern, is a breach of confidentiality. There may be situations where a decision to share relevant third party health information without consent is appropriate, but this requires careful thought. Further advice may be sought from the Trust Caldicott Guardian

***For further detail please refer to appendix 5 & 6, SOP for the management of Adopted Children's Health Records QHB & RDH**

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7. Other Vulnerable Patients

There may be a small number of other patients who feel that the existence of a database containing their contact details may place them at increased risk and may want to have details within their records restricted and flagged (those at risk of 'honour based violence', witness protection or victims of domestic abuse for example). It is important for healthcare staff who are approached with requests for a patient's record to be flagged to understand and communicate to patients that flagging a record should not be undertaken lightly because of the potentially significant impact on the ability of the NHS to deliver joined-up healthcare. Flagging a record as 'sensitive' will mean that local NHS IT systems will be unable to retrieve their address, telecoms details, registered GP Practice and alternative contacts (such as next of kin) from the PDS. The information will still be held nationally however. As a patient, if they require their record to be flagged, they should contact their GP. Similarly, if they wish to have a flag removed from their record, this should be done through their GP. We can however override the sensitivity at the Trust if it is deemed clinically necessary and we also have the ability to flag a record as 'locally sensitive' if necessary too.

8. Monitoring Compliance and Effectiveness

The key requirements will be monitored in a composite report presented on the Trusts Monitoring Report Template:

Monitoring Requirement	Number of requests to change identity and the number of identities actually changed via the Health Records Service Manager
Monitoring Method	Ongoing monitoring of requests to change ID via the Health Records Service Manager. Report available on request.
Report Prepared by	Service Manager Health Records
Monitoring Report presented to	Information Governance Action Group
Frequency of Report	Annually

9. Key References

Serial	Source of data	Date of publication/issue	Detail of requirement
(a)	(b)	(c)	(d)
1	<u>Data Protection Act</u>	2018	<p>The Data Protection Act controls how your personal information is used by organisations, businesses or the government. Everyone responsible for using data has to follow strict 6 rules called 'data protection principles'. They must make sure:</p> <ol style="list-style-type: none"> 1. processing be lawful and fair 2. purposes of processing be specified, explicit and legitimate 3. personal data be adequate, relevant and not excessive 4. personal data be accurate and kept up to date 5. personal data be kept for no longer than is necessary 6. personal data be processed in a secure manner <p>There is stronger legal protection for more sensitive information, such as:</p> <ul style="list-style-type: none"> • ethnic background • political opinions • religious beliefs • health • sexual health • criminal records
2	<u>Records Management: NHS Code of Practice Part 2</u>	2006	<p>Pre-Adoption Records: Records, where the NHS number has been changed following adoption, will be returned to the appropriate PCT and they should be retained securely and confidentially for the same period of time as all records for children and young people. Genetic information should be transferred across to the post- adoption record. Retain until the patient's 25th birthday or 26th if young person was 17 at conclusion of treatment, or 8 years after death. If the illness or death could have potential relevance to adult conditions or have genetic implications for the family of the deceased, the advice of clinicians should be sought as to</p>

			<p>whether to retain the records for a longer period.</p> <p>Child Protection Register (records relating to): Retain until the patient's 26th birthday or 8 years after the patient's death if patient died while in the care of the organisation.</p>
3	<u>Gender Recognition Act</u>	2004	<p>The purpose of the Gender Recognition Act is to provide transsexual people with legal recognition in their acquired gender. Legal recognition will follow from the issue of a full gender recognition certificate by a Gender Recognition Panel. Before issuing a certificate, the Panel must be satisfied that the applicant:</p> <ul style="list-style-type: none"> • has, or has had, gender dysphoria • has lived in the acquired gender throughout the preceding two years, and • intends to continue to live in the acquired gender until death <p>Where applicants have been recognised under the law of another country or territory as having changed gender, the Panel need only be satisfied that the country or territory in question has been approved by the Secretary of State.</p>
4	<u>Equality Act</u>	2010	<p>The act covers what was previously protected under the Sexual Discrimination Act 1975 – namely legal protection for transsexual people in the workplace and wider society against:</p> <ul style="list-style-type: none"> • victimisation • harassment • discrimination
5	<u>A:gender: A Guide for Staff and Managers</u>	2016	<p>This document has been subject to review in March 2016. It has been compiled to provide general guidance and advice to staff and managers about transsexualism, gender reassignment and intersex issues that are relevant to civil service employees. It also provides the recommended absence policy, which complies with The Equality Act 2010 Public Sector Duty.</p>
6	<u>HSIC Restricting access to a patient's demographic record-Notes for</u>	2014	<p>NHS patients have no specific legal right to prevent demographic data being stored on the Personal Demographics Service (PDS). The Government has determined that the PDS is the authoritative source of NHS demographic</p>

	<u>healthcare staff</u>		<p>information. The NHS cannot comply with requests for data not to be held on the PDS.</p> <p>Although demographic data must be held, there are cases where access to a patient's details must be strictly controlled. Access to demographic records can be restricted by any NHS patient who feels that their location details should not be accessible by the NHS or in other situations where vulnerable NHS patients request restricted access.</p>
7	<u>Transgender Guide for NHS Acute Hospital Trusts</u>	unknown	This booklet provides the basic information required to understand the needs of Transgender and Gender Variant people in a hospital setting.
8	<u>Derbyshire LGBT+</u>	NA	Derbyshire LGBT+ is Derbyshire's only LGBT specific support service.
9	<u>Trust Policy And Procedures For Patient Identification</u>	December 2020	Correct patient identification is an essential element of healthcare. It is fundamental in ensuring patients receive the correct assessment and subsequent interventions.
10	<u>GMC Guide to Trans healthcare</u>	Unknown	GMC guidance
11	<u>Gender Construction Kit</u>	N/A	A UK guide to changing things that are linked to gender
12	<u>Gender Identity Development Service (GIDS)</u>	N/A	Highly specialised clinic for young people presenting with difficulties with their gender identity.

Appendix 1 – Transgender Consent Query Letter Template

Our Reference:

Telephone: (01332)

e-mail:

Date

Private & Confidential

Dear

Re:

Thank you for referring this patient to the trust.

I note that in the referral you have disclosed the patient's transgender status. As you may be aware, the Equality Act 2010 protects individuals from unauthorised disclosure of their gender when this is not directly relevant to the referral. Could you please confirm that the patient has consented to this and that we are not in breach of equality legislation.

If the patient has not agreed to the disclosure of their transgender status, could you either resubmit the referral omitting this information or ask the patient for consent to disclose their old NHS number and gender identity? It may help to explain to the patient that disclosure, with patient consent, would allow us to include vital information from their old hospital records into their new files, as these are under a different NHS Number. This would be done in a way that does not refer to their previous gender and would be undertaken by the Health Records Manager so that staff are not aware of the patient's previous gender identity.

Yours sincerely

(Insert name and designation)

Appendix 2 – Transgender Consent Letter Template

Our Reference:
Telephone: (01332)
e-mail:

Date

Private & Confidential

Dear

I am writing to confirm receipt of your letter dated..... regarding your change of name, title and gender.

I can confirm that your details have been amended as requested, however we now need to determine how your health records should be managed going forward. We can arrange a date and time to meet and discuss this; you can either call me or you can complete the tick boxes below and return a copy this letter to me. Either way, I do need your input to determine how we move forward.

I enclose a copy of the Trust procedure for management of gender reassignment records, and I would be happy to answer any questions or queries you may have.

Yours sincerely

Name
Job Title

PATIENT CONSENT – please tick the appropriate box

I do consent to the whole of my existing health record (paper and electronic) being made available clinically for the purpose of my continuing healthcare and to having a marker being entered within the patient administration system to allow clinical staff to see that I have a trans history.

I do not consent for my existing health records to continue to be used. I also do not wish for a marker to be entered on my health record to allow clinical staff to see that I have a trans history. I request that my old health records are sealed and archived and I understand the risks associated with this decision.

Signature.....**Date**.....

Print Name.....

Please complete and return to the address above, thank you

