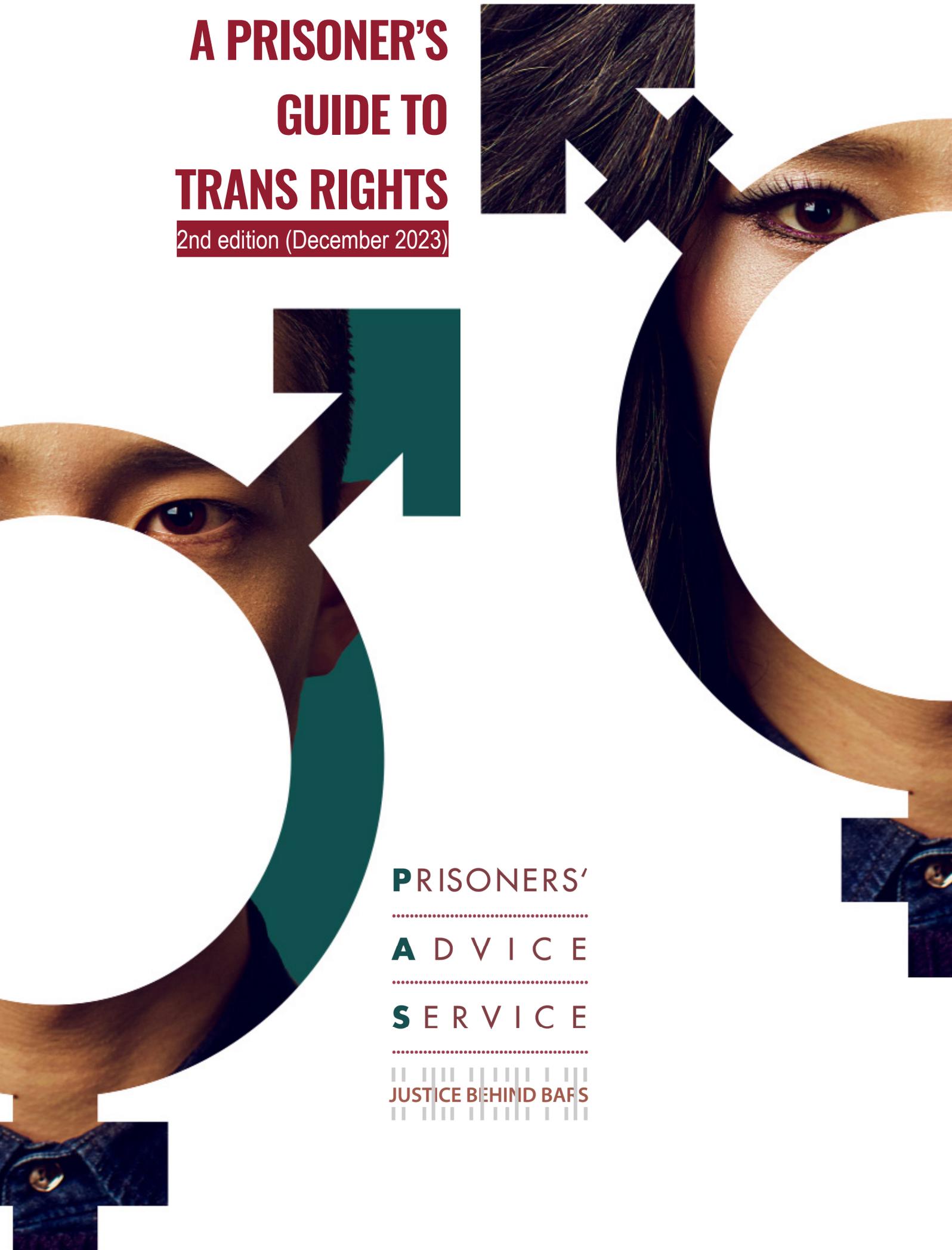


A PRISONER'S GUIDE TO TRANS RIGHTS

2nd edition (December 2023)



PRISONERS'

.....
A D V I C E

.....
S E R V I C E

.....
JUSTICE BEHIND BARS



A PAS SELF HELP TOOLKIT

PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND
REPRESENTATION TO PRISONERS

JUSTICE BEHIND BARS

A PRISONER'S GUIDE TO TRANSGENDER RIGHTS

Introduction

This toolkit is has been produced by Prisoners' Advice Service (PAS) and is aimed at those prisoners who identify as transgender. We use the term transgender throughout this guide to mean a person who does not identify with the sex they were assigned at birth. For example, the term transgender can include:

- a transgender woman (i.e. a person born male/assigned male at birth but who now lives as a woman)
- a transgender man (i.e. a person assigned female/born female at birth, but who now lives as a man)

This toolkit may also assist those who:

- identify as non-binary (i.e. those who do not identify as either male or female) or;
- are gender fluid (i.e. they can express themselves as either male or female at any given time) or;
- are questioning their gender identity

The purpose of the toolkit is to provide transgender prisoners with practical information about prison rules and procedures, and laws on discrimination and human rights. We hope that by providing this information you will be empowered to claim the rights that entitle you to identify in ways that are appropriate to you and to be treated respectfully according to the way you identify. We hope that you will feel able to challenge inappropriate behaviour and unlawful decisions in custody. The information in this toolkit is not legal advice. Before taking any legal action you should speak to a lawyer who can provide advice specific to your situation, or write to, or call, PAS.

This toolkit has been expressly written with the needs of transgender prisoners in mind. In March 2019 the Bent Bars Project conducted a survey of over 130 LGBT+ prisoners and asked what areas of prison life they would like to be covered in this guide.

By working together with Bent Bars, we have tried to cover as many areas as possible that directly relate to your needs in custody. If you are aware of an area that we have not covered please feel free to write to, or call, us and we will try and assist you.

We have also created a separate toolkit for lesbian, bisexual and gay prisoners. If you identify as both trans and gay, lesbian or bisexual, you may wish to consult the LGB toolkit in addition to this one. Because the law and policy relating to transgender prisoners is quite specific, we could not include all LGBT+ information in one guide. This guidance is specific to England and Wales. The policy on trans prisoners is different in Scotland. There is no formal policy in Northern Ireland, where trans prisoners are treated on a case-by-case basis.

This guide will explain:

- What the main prison policy in England and Wales says about how to 'care and manage' transgender prisoners and how it affects you
- What your rights are as a transgender prisoner
- What the prison's responsibilities are
- What a transgender case board is (including 'local boards' and 'complex boards')
- How to gain access to gender affirming healthcare and gender affirming clothing and products
- How to make complaints
- How to access legal advice

The production of this Self Help Toolkit for transgender prisoners was made possible thanks to the generous support of The Tudor Trust and The Paul Cottingham Trust.

CONTENTS

INTRODUCTION	6
PART ONE: THE PRISON SERVICE FRAMEWORK THE CARE AND MANAGEMENT OF INDIVIDUALS WHO ARE TRANSGENDER	
Background	7
What is the purpose of the policy	7
Summary of key policy changes	7
KEY TERMS: LOCAL TRANSGENDER AND COMPLEX CASE BOARD	8
What is a Case Board?	8
What happens at the Board	10
What happens after the Board makes their decision	11
Referring your case to a Complex Case Board	12
What is a Complex Case Board?	12
Disclosure	13
What happens once the Complex Case Board makes their decision?	13
BEFORE CUSTODY	
Pre Sentence Local Case Board	14
How am I allocated to a male or female prison?	14
What is a Gender Recognition Certificate (GRC)?	14
The new presumption What happens if I have a Gender Recognition Certificate?	14
ENTERING CUSTODY	
Being remanded in prison	17
Being sentenced	17
IN PRISON	
Self-declaration	18
How am I allocated to a male or female prison if I want to transition within prison?	18
Access to clothing and items to express your gender identity.	18
Segregation issues	19
HOW TO APPLY FOR A GRC IN PRISON	
The gender recognition process	19
HEALTHCARE	20
SEARCHES IN PRISON	
Full Searches	21
Intimate searches	22
Rub Down Searches	23
RELEASE TO APPROVED PREMISES (I.E. TO A HOSTEL)	23
BEING RECALLED TO PRISON	23

PART TWO: THE LEGAL OVERVIEW - YOUR RIGHTS AS A TRANSGENDER PRISONER AND THE PRISON'S DUTIES.

THE EQUALITY ACT 2010	24
Gender reassignment	24
Direct Discrimination	25
Indirect discrimination	25
Harassment	25
Victimisation	25
THE HUMAN RIGHTS ACT 1998	26
WHAT TO EXPECT FROM STAFF AND OTHER PRISONERS	27
SEX IN PRISON & SEXUAL HEALTH	27
Medical confidentiality	28
Self-harm	28
REPORTING TRANSPHOBIC ABUSE VIOLENCE TO THE POLICE	
What the prison has to do	29
The police's duty to investigate crime	29
The Victims' Right to Review Scheme	29
CELL SHARING	
Cell sharing and relationships	30
What does this mean for me?	30
SEPARATE ACCOMMODATION FOR TRANSGENDER WOMEN	30
COMMUNICATION WITH LGBT+ PRISONERS, GROUPS AND ACCESSING MATERIALS.	
Corresponding with other prisoners	31
Communication with LGBT+ organisations	31
Access to LGBT+ reading materials and magazines	31
Access to materials which contain adult content	31
LGBT+ INITIATIVES IN PRISON	32
WHAT TO DO IF YOU THINK YOUR RIGHTS ARE NOT BEING RESPECTED	
Making a COMP1 or DIRF complaint	33
Stage 2 Complaints	34
Confidential Access Complaints	34
The Independent Monitoring Board (IMB)	35
Legal claims	35
Types of civil claim	35
(1) Civil claims	35
(2) Judicial review	36
Legal Aid	36
ORANISATIONS THAT CAN HELP WITH LGBT+ ISSUES	38-42
GLOSSARY	43-44
ACKNOWLEDGEMENTS	45

INTRODUCTION

This toolkit is for those who identify as transgender. The first edition of the “Prisoner’s Guide to Trans Rights” provided information and guidance in relation to the Ministry of Justice’s 2019 policy framework on ‘The Care and Management of Individuals who are Transgender’. However, in February- March 2023 the Ministry of Justice issued an updated version of the policy. This second edition updates and replaces the previous guide and identifies the key changes included in the latest policy framework.

We use the term transgender throughout this guide to mean a person who does not identify with the sex they were assigned at birth.

For example, the term transgender can include:

- A transgender woman (i.e., a person born male/assigned male at birth but now lives as a woman.)
- It can also refer to a transgender man (i.e., a person assigned female/born female at birth, but now lives as a man.)

This toolkit may also assist those who:

- identify as non-binary (i.e., those who do not identify as either male or female) or;
- are gender fluid (i.e., they can express themselves as either male or female at any given time) or;
- are questioning their gender identity.

The purpose of this toolkit is to provide transgender prisoners with practical information about prison rules and procedures, and laws on discrimination and human rights. We hope that by providing this information you will be empowered to claim rights that entitle you to be treated respectfully according to the way you identify, and to challenge inappropriate behaviour and unlawful decisions in custody. The information in this toolkit is not legal advice. Before taking any legal action, you should speak to a lawyer who can provide bespoke advice to your situation.

This toolkit has been written with the needs of transgender prisoners in mind. In January 2019 the Bent Bars Project conducted a survey of over 130 LGBTQ+ prisoners and asked what areas of prison life they would like to be covered in this guide. By working together with Bent Bars, we have tried to cover as many areas as possible that directly relate to your needs in custody. If you see an area that we have not covered please feel free to write back to us and we will try and assist you.

We have also created a separate toolkit for lesbian, bisexual and gay prisoners. If you identify as both trans and gay, lesbian, or bisexual, you may wish to consult the LGB toolkit in addition to this one. Because the law and policy relating to transgender prisoners is quite specific, we could not include all LGBTQ+ information in one guide.

This guidance is specific to England and Wales. The policy on trans prisoners is different in Scotland. There is no formal policy in Northern Ireland; trans prisoners are treated on a case-by-case basis.

This guide will explain:

- What the main prison policy in England and Wales says about how to ‘care and manage’ transgender prisoners and how it affects you;
- What your rights are as a transgender prisoner;
- What the prison’s responsibilities are;
- What a transgender case board is (including ‘local boards’ and ‘complex boards’);
- How to gain access to gender affirming healthcare and gender affirming clothing and products;
- How to make complaints;
- How to access legal advice.

PART ONE: THE PRISON SERVICE FRAMEWORK THE CARE AND MANAGEMENT OF INDIVIDUALS WHO ARE TRANSGENDER.

Background

On 31 October 2019, the Ministry of Justice published new guidance as to how transgender prisoners should be managed and cared for. The new policy entitled 'The Care and Management of Individuals who are Transgender' was written in response to a high-profile case, where the previous policy had not been properly followed. On 31 March 2023 the policy was reissued with several new important changes.

The latest policy focuses much more on the potential risks that transgender prisoners pose to themselves and to others in prison as well as the risks they face from others. Because of this focus on 'risk', the policy appears to be quite restrictive and intrusive when it is first read. The intention of this toolkit / guide is to help you better understand how the policy operates.

The policy is also supported by 'Operational Guidance' published by the Ministry of Justice in February 2023. The Operational Guidance is intended for use by prison staff and should be read together with the main policy. In this toolkit we will explain both the main policy and the operational guidance and what you need to know to assert your rights. Copies of both of the Policy and the Operational Guidance will be available in your prison library. For family members or friends with access to the internet they can assess the Prison Framework Policy [here](#) and the Operational Guidance [Here](#).

What is the purpose of the policy?

The focus of the new prison service framework is to provide additional guidance on how to 'manage' transgender prisoners and other prisoners who express their gender identity in different ways. The policy states that its primary focus is on:

- Individuals who express a consistent desire to live permanently in the gender in which they identify, which is different to the biological sex assigned to them at birth (i.e., being transgender)
- This includes:
 - Those who wish to transition permanently to a new gender;
 - Those who wish to consistently live in a new gender but do not have a gender recognition certificate (as explained below)
 - Those who have gained legal recognition of their gender and possess a Gender Recognition Certificate (GRC).
 - Those who are intersex
 - Those who do not identify with any gender (non-binary)
 - Those who are gender fluid.
 - Those who cross-dress.

Summary of key policy changes

The latest policy framework issued on 31 March 2023 makes three important changes to how transgender prisoners are managed in custody. They are summarised below and later expanded upon in the guide.

First, there is a new presumption that any transgender woman who has a current charge or previous conviction for sexual or violent offences will not be housed in women's prisons.

This means that trans women with convictions for sexual or violent offences will not be held in the general women's estate, unless an exception has been recommended by a Complex Case Board and agreed by the HMPPS Director General and the Secretary of State for Justice. If a trans woman has a Gender Recognition Certificate (GRC), she may be held in a women's prison but not within the general population (i.e., she may be held in a separate accommodation such as E-Wing in HMP Downview).

Second, there is a new presumption that any transgender woman who retains her birth genitalia (i.e., has not had lower surgery / genital surgery) will not be held in women's prisons.

This means that trans women who have not had genital reconstruction surgery will not be held in the general women's estate, unless an exception has been recommended by a Complex Case Board and agreed by the HMPPS Director General and the Secretary of State for Justice. If a trans woman has a GRC, she may be held in a women's prison but not within the general population (i.e., she may be held in a separate accommodation such as E-Wing in HMP Downview).

Third, the disclosure of transgender prisoner's legal status (i.e., having a GRC) is now permitted for offender management purposes.

Previously prison officers were not permitted to share information about whether a prisoner has a Gender Recognition Certificate (GRC), except in certain circumstances (e.g., to prevent or investigate a crime, or where permission to share this information has been given). A new statutory exception has been added to the existing Gender Recognition Act 2004, which now allows disclosure of a persons' GRC status where it is deemed necessary for offender management purposes. If disclosures are made using this exemption, this should be recorded by the officer making the disclosure, including the reason that the disclosure was necessary.

KEY TERMS: LOCAL TRANSGENDER AND COMPLEX CASE BOARDS

What is a Case Board?

There are two types of case boards:

- A Local Transgender Case Board
- A Complex Case Board

What is a Local Transgender Case Board?

A Local Transgender Case Board consists of a group of professionals, based at the prison you are currently at. They will decide issues in relation to your management and care that are to do with your day to day living.

A Local Transgender Case Board must be:

- chaired by a senior prison manager and
- its decisions must be signed off by the Governor of the prison.

A Local Transgender Case Board may be attended by:

- a safer custody manager
- your offender supervisor/wing officer
- a pre-sentence report writer (if you are not yet sentenced)
- prison healthcare

- a prison psychologist
- an equality officer
- a GP
- a gender identity clinic specialist
- a Prison Escort Custody Service Manager
- either an official from the Ministry of Justice's Equality Team or an official from the Ministry of Justice's women's team.

A Local Transgender Case Board may be held before you are sentenced and sent to custody.

When you arrive into custody a Local Transgender Case Board must be held within 14 days. After an initial Local Case Board, the panel will likely set a further date to review your case. Your case can also be reviewed if there is a significant change of your circumstances, or a change to the risks posed to you in prison.

Your case will also be reviewed if you are about to be released from prison to make sure you are sent to the correct approved premises (i.e., a hostel) and to put in place any plans should you be returned to custody at any point.

At a Local Case Board, you will be asked about your views on two issues.

- First, they will look at issues in relation to your care. This might include for example how you wish to express your gender identity, what support you require on a day-to-day basis and practical arrangements for carrying out searches and showering etc.
- Second, they will look at issues as to how you are managed in the prison. The board will look at any risks you might face as a transgender prisoner, and they will also look at any potential risk to other prisoners.

It is important to note that Local Case Board has no power to allocate you to a different prison estate. Only Complex Case Boards and, where the new presumption applies, the Secretary of State, have the power to make changes in allocation decisions. You can still however express your view on where you want to be allocated at a Local Case Board.

You are entitled to attend a Local Case Board to put your views across. The Operational Guidance states that you may attend a local case board with a 'McKenzie friend'. A McKenzie friend is someone who can support you throughout the process and can help to advise you in relation to procedure. Normally they are not allowed to speak for you but can assist you in coming to decisions and can provide you with advice.

A McKenzie friend may be a member of the public, another prisoner or a solicitor acting in a personal capacity as a friend (i.e., without claiming legal aid). If you would like someone present at your hearing to act as a McKenzie friend, you must make a request to the case board. Once a request is made the panel chair will consider it and provide reasons for either allowing or refusing the request.

You are also entitled to see the papers and evidence that will be considered at the Local Case Board. This is known as 'advance disclosure' of information. You are entitled to access this information at least before your Case Board is held.

A sample of the advance disclosure form is provided in Annex C of the policy.

Advanced disclosure should contain:

- The date of the meeting
- Where the meeting will take place
- Who is chairing the meeting



- Which other prison officials will attend the meeting
- Information regarding your offending history
- Information regarding your risks of serious harm
- Any identified areas of risk that are relevant for the Case Board
- Any relevant healthcare information
- Whether you have any mental health issues
- Whether you have a personality disorder diagnosis
- Whether you have any learning difficulties
- Any other equalities considerations, such as race, disability, religion, sexual orientation
- Any sentence planning recommendations
- Any identified incidents of concerning behaviours
- Any protective behaviour and factors

What happens at the Board?

At a Local Transgender Case Board, the panel will meet with you and your McKenzie friend if you have requested one. They will consider the information and evidence that has been provided to you in the advance disclosure. They will ask you several questions about how you wish to be treated and managed within the prison.

At this point you can raise any concerns you have with the Board such as:

- Your views on whether you wish to be allocated to a male or female prison.
- You may wish to provide some evidence in relation to how you have been living in your acquired gender. Please refer to the categories above (or Annex B of the policy) for guidance on what evidence you can provide.
- How you wish to be supported and enabled to express your gender identity.
- How you wish to be referred to, including using your preferred pronouns.
- What support from family members, friends, or external organisations you are receiving.
- Your access to gender affirming items (for example, make up, wigs, male/female clothing.)
- How the prison will address your well-being in relation to searching, showering arrangements, and carrying out laundry. The prison should seek your views about whether you want to enter into a voluntary agreement with them (known as a compact) as to how you will have access to these services.
- Whether you are currently experiencing transphobic abuse/bullying from either staff or prisoners.
- Your access to gender identity treatment such as healthcare, hormones, and gender recognition surgery.
- Any other concerns you have.

Once you have expressed your views, the Board will make decisions in relation to how you are managed within prison. It is important to note that a Local Transgender Case Board does not have the power to allocate you to a different male/female prison. Only a Complex Case Board and in certain situations the Secretary of State for Justice has that power.

When making decisions in relation to how you are managed in prison, the Local Case Board will carry out a risk assessment. The purpose of the risk assessment is to carry out a balancing exercise between the protection of transgender prisoners in custody and the welfare of other prisoners in custody around them.

In assessing risk, the Local Case Board will look at the following potential risks, both to you as a transgender prisoner and to others.

The policy framework states that consideration should be given to potential risks to you from others, and potential risks you pose to others.

Potential risks to the individual (i.e., you) from others, or personal vulnerabilities of the individual, related to:

- Mental health and personality disorder;
- History of self-harm;
- Anatomy, 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 (i.e., you) to others in custody and an approved premise related to:
 - Offending history, including index offence, past convictions, and intelligence of potential criminal activity- e.g., credible accusations.
 - Anatomy, 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 other prisoners

We suggest that you look at these factors carefully, so you can advocate for yourself at the Local Case Board. We know these situations can be daunting and intimidating, especially when people have decision making power over you. However, it is important to try and be fully engaged in the process. Be sure to read all information in advance and prepare what you want to say. As with all situations in the criminal justice system, how you present yourself and how you communicate can influence decisions.

Here are few points that you can make to your panel:

- Being transgender should not be seen as a risk by itself. The Operational Guidance states this explicitly.
- Risks should be balanced, and they should consider both the risks that other prisoner pose to you and any potential risks that you may pose to others.
- If you find it difficult talking about anatomy you can ask staff to make sure this is handled in a sensitive manner. The Operational Guidance states that it should be.
- If you are experiencing bullying, discrimination, or harassment you should raise this.
- Your view as to where you wish to be located in the prison estate should also be considered.
- No two cases are alike, and each case should be assessed on a case-by-case basis.

What happens after the Board makes their decision?

Once a Local Case Board has decided how you should be managed and whether they will refer your case to a Complex Case Board, they should give you the reasons for their decisions. This should be provided by using a Local Case Board Record Form which can be found at Annex C5 of the Operational Guidance. The form should detail what happened at the meeting and the decision they have come to. The form should also record when your next review date is.

The policy framework states that a care and management plan must be produced at the Local Case Board which fully takes account all the risk factors identified both to the transgender prisoner and any risk that they present to others. A proforma of such a plan can be found at Annex C7 of the Operational Guidance.

If you have not received the reasons for the Board's decisions, you should follow the complaints process as set out below. If you disagree with any of the decisions made at a Local Case Board, you can make a complaint. To do this follow the 'How to Make a Complaint' section in this guide below. You may also want to seek legal advice if you want to take further action, as there is no right to appeal a decision of a Local Case Board. More guidance on this is provided below.

After the initial Local Case Board decision, they must reconvene to provide all parties with an opportunity to revisit earlier decisions. This can happen in the following circumstances:

- The Local Case Board has set a further review date.
- Your circumstances change.
- There is further confirmation of a prisoner living in the gender they identify with.
- You move to a new prison.

Referring your case to a Complex Case Board

- At the same time that the Local Case Board makes its decision about day-to-day issues and management, it must refer your case to the Complex Case Board where the following apply:
- Where allocation to the general women's estate is sought for a transgender woman with any sexual or violent offence conviction or current charge.
- Where allocation to a prison or approved premises is sought and is supported by the local case board which does not match the individual's legal gender.
- Where a transgender prisoner may present a risk to others and/or to themselves which requires special management.
- Where a transgender individual is at risk from other people in custody.
- Where a transgender individual with a GRC presents risks which are deemed to be unmanageable within the estate/approved premise that corresponds to 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 identity (i.e. obtains a GRC) during a custodial term or whilst on licence residing at an approved premise.
- Where a person gains legal recognition of their gender identity during a custodial term or whilst on licence residing at an approved premise.
- 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/approved premise estate.

What is a Complex Case Board?

A Complex Case Board is a panel of professionals that deal with complex issues that cannot be managed by a Local Case Board. They are a specialist review board that sits within the Ministry of Justice. A Complex Case Board has the power, in certain situations, to decide whether a transgender prisoner should be allocated to a male or female prison. This is particularly relevant in cases where a prisoner is seeking to be moved to a prison that does not match their legal gender. The task of the Complex Case Board is to determine what risks a prisoner may face and what risk they may pose to others, and whether those risks are best managed in either the male or female prison estate. A Complex Case

Board can also decide whether further risk assessments are required.

Previously Complex Case Boards enjoyed more discretion as to where to allocate transgender prisoners. The new policy limits this. All transgender prisoners will now be initially allocated according to their legal gender. When legal gender is not confirmed allocation should be in line with the prisoner's birth sex.

The new framework (introduced in 2023) further provides a presumption that:

- any transgender woman **with a GRC** and **with a conviction or current charge for a sexual or violent offence*** or **who retain their birth genitalia** will be held in separate accommodation within the women's estate (i.e., a separate wing like those that operated at HMP Downview).
- any transgender woman **without a GRC** and **with a conviction or current charge for a sexual or violent offence*** or **wh** will be generally held in a prison which matches their sex registered at birth.

*A full list of relevant offences is provided at Annex D in the policy.

The Complex Case Board must complete a full risk assessment to consider the circumstances of each individual. In exceptional circumstances, a Complex Case Board can recommend that a transgender woman prisoner who meets either of the two presumptions above should be allocated to the general women's estate. However, this requires that a recommendation for an exemption be made to the HMPPS Director General and then to the Secretary of State for Justice for a final decision. The policy framework states that recommendations for exemptions will only be made where the Complex Case Board has a high level of confidence that the individual poses a low risk of harm to other women in custody or approved premises.

All complex review boards are chaired by a Prison Group Director for allocation or the Community Interventions Deputy Director. Other members of a Complex Case Board must include:

- A psychology lead
- The Head of Women's team in prison
- HMPPS Equalities Team
- Attendances from the Local Case Board.

Disclosure

Prior to a Complex Case Board taking place, you should receive the papers and evidence that will be considered by the panel (known as 'advance disclosure'). Annex C contains the pro forma that must be completed prior to each Board, it is the same information that must be disclosed at a Local Case Board (described above). You should receive this four days before the Board takes place so you are aware of the information that will be discussed. Some information may not be disclosed to you on the grounds or security or operational issues. If some information is withheld from you, a "gist" (i.e., a summary of the information) must be provided. As the meeting takes place within the Ministry of Justice you will not be able to attend in person. At the very least you should be able to make representations (i.e., send your views or wishes) to the complex Case Board. If you are not allowed to make representations, this may be unlawful and could be challenged.

What happens once the Complex Case Board makes their decision?

Once the Complex Board makes any decisions, you should be notified in writing. If you disagree with the outcome, you may wish to make a complaint or seek legal advice as there is no right of appeal against their decision.

BEFORE CUSTODY

Pre Sentence Local Case Board

If you have not yet been sentenced but are likely to receive a prison sentence, then the probation service should request an adjournment of your sentencing hearing (i.e. postpone the hearing) so they can prepare what is known as a pre-sentence report.

A pre-sentence report is a document that sets out the broader circumstances of your life including but not limited to: your current lifestyle, how you self-identify regarding your gender, your level of education, whether you are employed, whether you have any previous convictions, whether you have any mental health issues and what courses might assist you in prison.

If it is likely that you will receive a prison sentence, then a 'Local Transgender Case Board' will occur. This means that prison officials should meet before you are sent to a prison so they can plan for when you arrive there. A 'Complex Case Board' may also happen before you go into custody. We are aware in practice that these steps rarely happen. Further details regarding a Local and Complex Case Board can be found above.

How am I allocated to a male or female prison?

The main principle in deciding whether you are allocated (i.e., placed) to either the male or female prison estate is your legal gender. Your legal gender is what is recorded on your birth certificate or your Gender Recognition Certificate.

What is a Gender Recognition Certificate (GRC)?

A GRC is a legal document that has been issued under the Gender Recognition Act 2004. It states that you have satisfied the criteria for legal recognition of your acquired gender, and you must now be treated as the legal gender provided in the certificate.

We have provided below the steps that should take place before you enter custody and what happens thereafter. However, we are aware that not all these steps take place in practice. We wish to be clear that in practice, unless determined otherwise by a Complex Case Board or Secretary State for Justice, transgender prisoners will be located in prison according to their legal gender.

The new presumption

The 2023 framework further provides a new presumption that:

- any transgender woman **with a GRC and with a conviction or current charge for a sexual or violent offence** (a full list is provided at Annex D) or **who have their birth genitalia** will be held in separate accommodation within the women's estate (i.e., a separate wing like those that operated at HMP Downview).
- any transgender woman **without a GRC and with a conviction or current charge for a sexual or violent offence** or **who have their birth genitalia** will be generally held in a prison which matches their sex registered at birth.

What happens if I have a Gender Recognition Certificate?

Some transgender people will have a Gender Recognition Certificate ('GRC') prior to being sent to prison. However, many transgender people will not have a GRC. We appreciate that some transgender people may wish to apply for a GRC, but others may not. Further details as to how to apply for a GRC are included below.

The prison policy states that if you have a GRC you should be placed in the part of the prison estate that corresponds with your legal identity, unless the new presumption applies, and you have a conviction or current charge for a sexual or violent offence or you have your birth genitalia.

For example:

- If you are a transgender woman and have a GRC and have no conviction or current charge for a sexual or violent offence, and you have no birth genitalia then you should be placed in a female prison.
- If you are a transgender woman and have a GRC but have a conviction or current charge for a sexual or violence offence or have birth genitalia you should be placed in separation accommodation within the women's estate (i.e., E Wing at HMP Downview).
- If you are a transgender man with a GRC then you should be placed in a male prison. However, you can request to not be placed in a male prison if you wish.
- All transgender prisoners with a GRC must be referred to the Central Operational Framework Team to complete a review of the case and determine whether a Complex Case Board is required.
- Evidence of gender affirmation surgery will be required in the form of medical documentation or confirmation via healthcare records.
- Transgender women prisoners with a GRC can be temporarily held in the men's estate to facilitate a safe transfer to the female estate, only if it is for the shortest time possible and the prison is held separately from other prisoners.
- If you have a GRC and are placed in separate accommodation in the women's estate (i.e., HMP Downview) a Complex Case Board will review your placement. Local Case Boards will be held every 2 months (or more frequently if needed). A Local Case Board can request a referral to a Complex Case Board at any time where they deem there has been a significant change in the prisoner's risk of circumstances.

Section 9 of the Gender Recognition Act 2004 states that when a full GRC is issued to a person that person's legally recognised gender becomes, for all purpose, their acquired gender. This means that if you are a transgender woman with a GRC you should be treated in the same way as a non-trans woman for all purposes. However trans women prisoners with a GRC can be held in a male prison or separate accommodation in the women's estate if they are deemed to pose a high risk of harm to cis women or due to their behaviour. Therefore, if you are a transgender woman prisoner with a GRC you may be kept in separate accommodation in the women's estate or in the male prison estate following an individual assessment. This is similar to cis women who are assessed as being so dangerous that they cannot be safely managed in the women's estate, who may also following individual assessment, be held in the male estate.

If you are transgender but do not yet have a GRC before coming to prison, your case will be dealt with in the following ways.

First, you will be allocated to either a male or female prison based on your legal gender.

For example:

- If you are a transgender woman without a GRC you should normally be placed in a men's prison. You can apply via the Local and Complex Case Boards to be transferred to the women's estate. If you have a conviction for a sexual and or violent offence, or have birth genitalia, it will be presumed that you are unsuitable to be transferred to the women's estate. However it is possible, although rare, to be granted an exemption by the Secretary of State for Justice.
- If you are a transgender man without a GRC then you will most likely be placed in a female prison in line with your birth sex.

If your legal gender is unknown, the decision on whether you go to the male or female prison estate will be based on what is referred to in the policy as the 'best-available evidence' about your gender. This means that the prison will decide whether there is sufficient evidence to 'confirm' that you have been living in the gender that you identify with.

Until a Local Case Board is convened, consideration must be given to an appropriate location within the prison that ensures your safety and that of other prisoners.

Annex B of the policy lists factors that prison officials must consider when deciding if your gender identity has been confirmed.

The lists are organised into four categories based on how 'strong' the evidence is. The categories are; full confirmation, strong confirmation, limited confirmation, and counter confirmation.

Evidence of full confirmation includes:

- Having a birth certificate confirming that your gender has been reassigned;
- Having a Gender Recognition Certificate (note: prison officials are not allowed to ask to see your GRC, but you can voluntarily offer it if you give written consent);
- Evidence of an application for a gender recognition certificate (again this cannot be asked for by the prison, but you can provide it voluntarily or ask the prison to check with the Gender Recognition Panel if you have made an application).

Evidence of strong confirmation includes:

- Advice from your GP
- Advice from a Gender Identity Clinic
- A diagnosis of Gender Dysphoria (this is a recognised psychiatric condition and is where a person experiences discomfort or distress because there's a mismatch between their biological or legal sex, and how they feel about their gender identity)
- Medication or hormone treatment
- A psychological assessment which confirms discomfort with birth gender.
- You have evidence/examples that show you are living your life / presenting in your acquired gender (which is different from birth), such as:
 - A change of name and appearance
 - Use of prosthetics
 - Consistent use of gendered spaces
 - Day to day living (i.e., names on your identification cards have been changed i.e., passport, driving licence, bank cards etc)
 - You have official forms completed in your acquired gender.

Evidence of limited confirmation includes:

- Limited evidence that you are living in your new gender (i.e., insufficient evidence that you have changed your appearance, name, etc).
- Limited clarity or stability of an intention to permanently change your gender.
- The policy recognises that if you are a young person or have lived abroad or are at an earlier stage of transition, this may prevent you from having actual life evidence. Evidence will be accepted from teachers and professionals working with you.
- If you are non-binary or gender fluid, you will be allocated to a prison that correlates to your legal gender.

Counter confirmation includes:

- If it appears that your reason for changing gender is linked to your offence or sentence.
- If it appears that your decision to transition is linked to gaining access to future victims.

- Evidence of an insincere motivation to transition or a motivation undermine the system, particularly if linked to a diagnosis of personality disorder and or narcissistic traits

We understand that it can be very difficult to obtain evidence to confirm your gender identity. If your case is adjourned for a pre-sentence report, it is important that you bring as much evidence as you can to the meeting with the probation officer, so they can have a full and accurate picture of your gender identity.

For some people it may not be possible to obtain all the evidence you would like at this stage. However, you can also still provide evidence at a Local Transgender Case Board if you are sent into custody. Your case may also be referred to a Complex Case Board, if it is proposed that you should be allocated to a prison which does not match your legal gender.

ENTERING CUSTODY

Being remanded in prison

If you are remanded into custody (i.e., denied bail before your trial) you will be sent to a prison that matches your legally recognised gender. If your legal gender is unknown, the decision will be based on the 'best available evidence' about your gender.

If this is the case, we know it may be very difficult for you to obtain and provide the prison with evidence of your gender identity and how you have been living your life. If you cannot provide evidence immediately, there will be other opportunities to provide it, but it is best to try to provide it as soon as you can. If you are immediately sent to custody you may want to ask a friend, a relative or partner to send you copies of documents. You should avoid sending in original documents to prison as these could be lost in the post or lost by the prison service.

Once you arrive into custody a Local Case Board has to be held within 14 days. This is a mandatory step the prison must take. Your case then may be referred to a Complex Case Board, particularly if the prison is considering transferring you from one part of the prison estate to another (e.g., from the male estate to the female estate or vice versa).

Being sentenced

If you have been sentenced, then you should have had a pre-sentence report and a Local Case Board should have met. In some cases, the Local Transgender Case board may have also referred your case to a Complex Case Board (as explained above).

You will be initially allocated to either a male or female prison based on your legal gender, unless your legal gender is unknown, in which case the 'best available evidence' principles as set out above will apply.

The policy states that all individuals will be housed according to their legal gender, unless a Complex Case Board has decided otherwise. For example, if you are a trans woman without a GRC, you will be housed in a men's prison unless a Complex Case Board decides that you should be allocated in a women's prison.

At the time of sentencing, the regional prison office must check to see whether a Complex Case Board has taken place. The Prisons Escort Custodial Service (i.e., those that take you to prison) will alert the Governor of the Prison and the Prison Group Director's office, in case your gender identity cannot be determined and/or there is any risk of harm to you or to other individuals in custody.

If your legal gender cannot be determined, the policy allows you to be placed in a supported environment



within a prison, separate from the main prison population until a Local Case Board has occurred. This does not mean you should be placed in isolation, such as segregation or in healthcare. We are aware that it is rare for this process to be followed.

IN PRISON

Self-declaration

The policy says that those who are in prison can self-declare their gender identity and staff are expected to respect this identity and use the correct pronouns.

For example:

- If you are a transgender woman, you may wish to be called “she”
- If you are a transgender man, you may wish to be called ‘he’
- If you identify as non-binary, you may wish to be called “them”
- If you are gender fluid, you may use more than one pronoun, depending on the situation.

Ultimately it is up to you as to which pronouns you wish staff and other prisoners to use. It is important to tell staff how you want to be referred to so that your wishes are respected.

The process of deciding which estate you should be held in is entirely separate from self-declaration. For example, if you are a transgender woman and you wish to be called she, prison staff are expected to respect your pronouns - regardless of whether you are held in the male or female prison estate.

How am I allocated to a male or female prison if I want to transition within prison?

If you begin transitioning in prison or you would like to, you should ask for your case to be considered by a Local Case Board. Depending on the nature of your transition, your case may be referred to the Complex Case Board. These are discussed in more detail above.

Access to clothing and items to express your gender identity.

The Operational Guidance is very clear about the right to access clothing and other items you need in order to express your gender identity. It states:

“transgender individuals must be allowed to wear clothing consistent with their identified gender. This may be subject to risk, operational and security assessments. Items to support gender identity should be obtained from an equivalent opposite-gender prison.”

The Operational Guidance also recognises the importance of prosthetics and states:

“transgender individuals sometimes use special garments or prosthetics to help them present in a more feminine/masculine appearance. They can be crucial to their appearance and self-confidence in effectively living and being accepted in the gender they identify with. Establishments are encouraged to provide such items, but only after sufficient risk assessments have been made on the items and the Governor is satisfied that it does not compromise security or safety.....”

If there are any difficulties with an individual retaining special garments or prosthetic items in their possession, advice should be sought from a gender identity clinic or mental health team before any decision is made. All decisions are to be recorded.”

Practically this means that you should be able to have access to gender affirming clothing and items from the prison, subject to a risk assessment and security issues. One way of obtaining the items is to ask your personal officer to provide you with a catalogue of items that would be available in either a male/female prison. You should then be able to order these items on a canteen sheet. If you have difficulties in ordering products, you should follow the complaints process as described below.

Segregation issues

For a detailed account of how segregation works and what the rules are behind it please see Prisoners' Advice Service's segregation guide.

Specifically, in relation to transgender prisoners the policy framework states some transgender prisoners may need to be placed in a supportive environment until a Local Case Board has been convened within the 14-day time limit. However, every effort should be made to avoid isolation of a transgender prisoner in a Care and Separation Unit (known as 'segregation'). Where it is not possible to manage a transgender prisoner in an appropriate supportive environment an urgent referral should be made to a Complex Case Board. Where a decision is made to place a transgender prisoner in segregation a notification must be sent to HMPPStransgender@justice.gov.uk within 7 days of the decision.

HOW TO APPLY FOR A GRC IN PRISON

We understand that some prisoners may want to apply for a gender recognition certificate whilst in custody. This is a complicated process. We have provided some brief guidance below as to who you can contact to obtain advice. Unfortunately, the application process contains several forms which we cannot attach to this guide.

If you are thinking about applying for a gender recognition certificate in custody you may want to initially talk to a friend, family member, a listener, or an equalities representative.

If you would like to obtain the necessary forms and guidance you should contact:

Gender Recognition Panel

GRPenquiries@justice.gov.uk

Telephone: +44 (0) 300 1234 503

Gender Recognition Panel, PO Box 9300, Leicester, LE1 8DJ

The gender recognition process:

An application to change your legal gender is made to the Gender Recognition Panel. The Panel is a branch of HM Courts & Tribunal Service. It is formed from an administrative team, judges, legal members and medical members.

The application for a Gender Recognition Certificate is a legal process. To grant a Certificate the panel must be satisfied that an applicant complies with what is required under the Gender Recognition Act.

The following requirements are needed for an application to change your gender:

- You are 18 years or older
- You have a diagnosis of gender dysphoria
- You have lived in your new gender for a period of 2 year before you make your application
- You continue to live in your acquired gender until you die and
- You have a report from a registered gender dysphoria specialist or a registered psychologist to support your application to live in your new legal gender.

For more information on the detailed application process, you can contact:

The Gender Identity Research & Education Society Melverley, The Warren, Ashted, Surrey, KT21 2SP, England. Telephone: 01372 801 554

The legal implications of having a Gender Recognition Certificate under the Gender Recognition Act 2004.

Once you obtain a gender recognition certificate there are certain legal implications to having one.

As mentioned above section 9 of the Gender Recognition Act 2004 ('GRA') requires that a person who has obtained a Gender Recognition Certificate must be treated in accordance with their acquired gender for all purposes.

Section 22 of the GRA 2004 provides that it is a criminal offence for a person who has acquired protected information (i.e. that a person had made an application for a Gender Recognition Certificate or that an application for a GRC has been granted) in an official capacity (i.e. a prisoner officer) to disclose the information to any other person (i.e. to talk about it) unless one of the exceptions in section 22 applies.

Under section 22 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 (you have consented)

s.22(4)(d) – the disclosure is in accordance with an order of a court or tribunal (the Courts have said its ok to disclose it)

s.22(4)(e) - the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal

s.22(4)(f) – the disclosure is for the purposes of preventing or investigating crime

s.22(4)(i) – the disclosure is in accordance with an Order under s.22(5), currently this is the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005 which allows disclosure for, amongst others, purposes of obtaining legal advice, religious purposes, medical purposes.

s.22(4)(j) – the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section.

A new exception was added under a.22(5) in October 2021 where the disclosure can be made where it is necessary for offender management purposes. Disclosure made under this exemption should be recorded, including the reason that the disclosure was necessary.

HEALTHCARE

The Policy Framework on the 'Care and Management of Individuals who are Transgender' states if you are being treated for gender dysphoria before you come into prison, this treatment should continue until your gender specialist has been consulted on an appropriate way to manage your treatment in prison. This means that if you are taking hormones as part of your prescribed health care, you should continue to get access to hormones.

The Operational Guidance also recognises that many transgender people self-medicate (i.e., take hormones that are not prescribed by a doctor) and acknowledges that stopping hormones (even if non-

prescribed) can have serious adverse effects. If you are using non-prescribed hormones, you should raise it with the Local Case Board and seek advice from prison health care.

As a general principle, you are entitled to receive the same quality of care in prison as you would expect to receive outside of prison from the NHS. This includes counselling and access to hormone treatment.

You can request a referral from the GP in prison to see a Specialist Gender Dysphoria clinic. These are sometimes known as Gender Identity Clinics (GICs). There is no longer a need for you to see a psychiatrist to be referred to a clinic.

You can also make an application for gender reassignment surgery. This will result in a specialist consultant providing advice about whether gender affirmation surgery is appropriate in your case. We are aware that it is extremely rare to obtain gender affirmation surgery whilst a prisoner is still in prison. To date no transgender female prisoners have been provided with 'bottom' surgery (i.e., reconstructive surgery on their genitals).

SEARCHES IN PRISON

The procedures for searching transgender prisoners will often depend on whether a prisoner has a Gender Recognition Certificate ('GRC'). It is important to note that prison officers cannot carry out a search for the purpose of finding out your gender. If this happens to you, this is highly likely to be a breach of your human rights. For more information on this please see part two of this guide below.

Both the Prison Service Framework on 'The Care and Management of Transgender Individuals' and Annex A of the Searching Policy Framework provide guidance as to how prison officers should search transgender prisoners.

For the purposes of comparison, we will explain what should be expected for each type of search and how this would relate first to non-transgender prisoners and then to transgender prisoners.

The prison has powers to use different types of searches. These are known as:

- Full searches
- Rub down searches

Full Searches

A full search is the most invasive kind of search. For non-transgender men, it involves males removing the top half of their clothing, putting it back on and then removing the bottom half of their clothing and then putting it back on. At no time should a prisoner be fully naked.

For non-transgender women, a full search involves the removal of all a woman's clothing apart from her underwear. A more invasive search involves removing the underwear as well. The more invasive search can only happen if there is intelligence that a non-transgender woman has concealed an item in her underwear or if illicit items have been discovered during the initial search. At no time should a prisoner be fully naked. During a more invasive search, non-transgender men can be asked to squat to search for further items. Non-transgender women must never be asked to squat.

If a prisoner has a Gender Recognition Certificate they must be treated in their acquired gender in every respect. This means that they must be treated in accordance with the regular guidance for searching non-transgender men and non-transgender women.

Under the policy prisoners with a GRC should only be searched by officers of the same legal gender. For example, a transgender woman with a GRC should only be fully searched by female officers. She

should never be searched by male officer. Often prisons will reach a voluntary agreement with the prisoner about how to conduct searches.

Transgender men, however, can be searched by both female and male officers. This is because non-transgender male prisoners can also be searched by either male or female officers. For transgender women prisoners, if you have undergone gender confirmation treatment, you cannot be asked to squat, even if you do not hold a GRC.

The policy framework states that before a search starts, a sensitive discussion should be had with a prisoner to allow them to determine their preferences around how the search is conducted. This may be achieved through a 'voluntary compact' if a prisoner consents to it. A 'voluntary compact' is a written agreement that clearly sets out the arrangements for searching a transgender prisoner including the gender of searching staff. The compact must be signed voluntarily (i.e., of your own free will and not be coerced) to be legal. Searching arrangements are a key and important area to discuss at your Local Case Board.

The policy framework does distinguish between those transgender prisoners with a GRC and those without. If you do not have a GRC, the policy states that normally a prisoner would be fully searched by staff of the same legal sex (i.e., a transgender woman who is legally male would be searched by a male officer; a transgender man who is legally female would be searched by a female officer). This, however, may depend on how far you are in your transition. The policy recognises that not having a GRC does not prevent prisoners from being searched by staff of the (legally) opposite sex. The policy recognises that the wishes of the prisoners may be the same as those of the prison.

If you are in the process of transition and your circumstances change, the agreed arrangements for searching you can also be changed. This can happen via a Local Transgender Case Board or via a request to change your 'voluntary compact' around searching.

Intimate searches

Prison officers do not have any legal power to conduct an intimate search. An intimate search is any search that relates to your mouth, anus or vagina. An intimate search can only be carried by a healthcare professional, with the prisoner's consent (which means you have to agree to it). A healthcare professional will not carry out an intimate examination without a clear clinical need for it.

Non-transgender men may have their penises visually inspected by prison officers, but only if there are grounds to suspect (from CCTV or intelligence during a full search) that a male prisoner has hidden an item in their genital area. As described above, a male prisoner may be asked to squat, and officers will then examine the area more closely. Officers are only allowed to observe. Sometimes prison officers can use mirrors. If a male prisoner refuses to bend or squat, they may be charged with a prison disciplinary offence and reasonable force can be used to make them bend or squat. A record must be kept where these measures are used.

If an item is found, prison officers should ask the prisoner to remove it. For example, if it is plugged inside the anus, it cannot be removed without consent as this would mean it was an intimate search. Where the item is clearly and fully visible for example taped to the skin, and removal can be taken without risk of injury it may be removed without consent and by force if necessary.

If an item is partially visible, for example, protruding from the anus and it is strongly believed that the removal can be undertaken without risk of injury it may be removed without consent if necessary but careful consideration must be given before it is removed.

Where an item can be more easily removed, but also involves a degree of intrusion (for example drugs in the foreskin) officers may use force to remove the item if consent is not given. There must however be a serious risk to prison security if the prisoner retains possession.

Where the suspect item does not pose an immediate or serious danger to prison security (e.g., a small quantity of drugs) or forced removal is not justified then prison disciplinary proceedings may be brought.

A decision to carry out a full search must be documented. A sample form of what needs to be recorded is included at Annex 3 of the Searching Policy Framework. If you think that your search was unlawful, it will be important to obtain a copy of the full search record to challenge any of the underlying reasons.

Rub Down Searches

Rub down searches are the most commonly used type of searches. The rub down process should not involve contact with breasts or genital areas. Male prison staff are not allowed to rub down female prisoners. However female staff can perform rub down searches on both male and female prisoners.

If you have a GRC and are a transgender woman, male officers must not carry out rub down searches on you. Female prison officers can however search both male-to-female and female-to-male transgender prisoners.

The Operational Guidance recognises that transgender prisoners may be wearing prosthetics, such as breasts, prosthetic penises, corsets or binders. The Guidance states that when an individual is required to remove the prosthetics, transgender prisoners should be asked to remove the items themselves. The items should then be searched and then returned to the individual, giving them privacy to adjust and replaced the removed items.

RELEASE TO APPROVED PREMISES (I.E. TO A HOSTEL)

If you are going to be released on licence to a hostel, then a Local Case Board will meet and decide how best to manage your needs. A Local Case Board can meet both before and after you have been released. You must be treated in the same way as identified above for the operation of Local Case Boards and decision making around your care and management.

If you are a transgender woman, the same location principles apply as set out above, as to whether you are presumed unsuitable to be housed in a women's approved premises (e.g. women's hostel). If those restrictions apply to you (i.e. you have convictions for violent or sexual offences and/or you retain your birth genitalia) then you will be housed in a male premise, unless an exemption has been granted by the Secretary of State for Justice.

BEING RECALLED TO PRISON

Whilst you are on licence any contingency decisions (i.e. decisions made in relation to your supervision on licence and whether you present with an increased risk of serious harm) must be made by a Local Case Board chaired by a prisoner manager.

If you are recalled to custody (i.e., it is alleged that you have breached your licence conditions and you are sent back to prison) the same process described above will apply. You will be initially allocated to a male or female prison according to your legally recognised gender (or the best available evidence), unless the one of the presumptions applies.

PART TWO: THE LEGAL OVERVIEW - YOUR RIGHTS AS A TRANSGENDER PRISONER AND THE PRISON'S DUTIES.

The prison service, like many other public bodies, has certain obligations towards you. This includes the duty to not discriminate against you on the grounds that you are transgender. Discrimination occurs in prison when you are treated in a worse or less favourable way because you are transgender. The prison also has an obligation to respect your human rights.

The main laws that offer protection as a transgender prisoner are the Equality Act 2010 and the Human Rights Act 1998.

THE EQUALITY ACT 2010

The Equality Act 2010 is the law that governs discrimination in England & Wales. It sets out the different forms of discrimination that are prohibited in law.

The Act set outs a number of what are known as 'protected characteristics'.

These are:

- Age
- Sex
- Gender reassignment
- Disability
- Marriage and civil partnership
- Pregnancy
- Race
- Religion or belief
- Sexual orientation

Gender reassignment

Under the Equality Act 2010, a person has the protected characteristic of gender reassignment if they are proposing to undergo, is undergoing, or has undergone a process (or as part of a process) for the purpose of reassigning that person's sex by changing their physical appearance. This means that if you are proposing to change the way you physically look, from the gender you were assigned at birth, into a different (e.g., the 'opposite') gender, you will have the protected characteristic of gender reassignment. In other words, you don't have to have completed gender transition; you could be just starting the process or wanting to start the process of transition. The Equality Act 2010 specifically uses the word 'transsexual' when describing gender reassignment; however, some people consider that term is now outdated, and it is interchangeable with transgender. You do not need a gender recognition certificate for this equality protection to apply.

What is meant by 'undergoing a process' is set out more clearly in the Equality and Human Rights Commission's Statutory Code of Practice for Services, Public Functions and Associations. The Code of Practice states that to be protected under the Equality Act 2010 you do not have to have undergone a medical transition. The Code of Practice says so long as you have begun the personal process of moving away from your assigned gender at birth, by taking relevant steps, for example changing the way you dress, you will be protected by the Act.

The Act also gives additional protection to people with a diagnosis of 'gender-dysphoria' and 'gender identity disorder'. If you have been diagnosed with either of these and they have a long-term adverse effect on your ability to carry out normal day-to-day activities, you may also be protected under the

disability discrimination provisions of the Equality Act 2010. It is important to note, however, that you do not need a diagnosis of either gender dysphoria or gender identity disorder to be protected by the gender reassignment legal protections of the Equality Act 2010.

Under the Equality Act 2010 you are not allowed to be treated worse or less favourably than someone else because you are proposing to, are undergoing, or have undergone gender reassignment. For example, prison officers cannot treat you worse because you identify as transgender. This may amount to discrimination. For example, being mis-gendered would amount to direct discrimination.

The main different types of discrimination outlawed by the Act are:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

Direct Discrimination

Direct discrimination is when you are treated less favourably (i.e., worse) than someone with a similar situation. For example, if a prison officer treats you worse because you identify as transgender than they would treat a non-trans prisoner, this would amount to direct discrimination. This type of discrimination cannot be justified (apart from on the grounds of age) i.e., a prison officer cannot say he or she had a good reason for treating you worse because you are transgender.

Indirect discrimination

Indirect discrimination is when a particular organisation has a rule or policy that applies to everyone, but it specifically disadvantages people with a protected characteristic. This form of discrimination can be justified if there is a good reason for the policy or rule. However, an organisation must be able to back up the good reason for the policy with evidence.

An example of indirect discrimination would be if a male prison had a policy that refused to provide beauty products. As transgender women may require beauty products to look more feminine, this treatment may amount to indirect discrimination as it would put transgender prisoners at a distinct disadvantage.

Harassment

Harassment is when a person receives unwanted conduct relating to a protected characteristic.

Unwanted conduct includes a wide range of behaviour. It includes both spoken and written abusive words, inappropriate jokes, and physical gestures.

Harassment is unlawful if it is connected to your gender reassignment and the effect of the harassment is to violate your dignity or to create an intimidating, hostile, degrading, humiliating, or offensive environment for a person.

Victimisation

Victimisation is when you are treated badly by an organisation because you have made a complaint about the discrimination you have received. This can also apply to someone supporting a person who is complaining about the treatment they received.

An example of this would be if a prisoner submitted a COMP1 (complaint form) about a prison officer's misconduct, such as being transphobic, and then the officers treated that prisoner worse because they had made the complaint. It would also be victimisation if the officers tried to make that prisoner withdraw the complaint.

THE HUMAN RIGHTS ACT 1998

The Human Rights Act 1998 introduced the European Convention on Human Rights directly into UK law. The Human Rights Act 1998 requires public authorities (i.e., prisons and probation) to act in ways that do not violate the person's Convention Rights. This means that the prison must respect your rights when making decisions about your care or treatment. If they fail to do so, in some circumstances they could be acting against the law.

The following is a list of the rights in the Human Rights Act:

- Article 2 of the Convention protects the right to life. The prison has a duty to protect your life. This may include a duty to protect you from a risk of harm and a duty to investigate deaths and near deaths in prison.
- Article 3 of the Convention provides protection from inhuman and degrading treatment and torture. The prison authorities must not treat you in a manner which is inhuman, degrading or amounts to torture. For example, they must not use any form of punishment that could be considered inhuman or degrading. The prison authorities should also protect you from suffering inhuman, degrading treatment or torture inflicted by other prisoners. Article 3 is not limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering. Under Article 3 the prison also has a duty to effectively investigate complaints regarding inhuman or degrading treatment. This is explored in more detail below.
- Article 4 of the Convention prohibits the use of slavery or forced labour.
- Article 5 of the Convention provides the right to liberty.
- Article 6 of the Convention provides the right to a fair trial.
- Article 7 of the Convention prevents you from being punished without law.
- Article 8 of the Convention protects the right to private life, family, and correspondence. Article 8 is a very broad right and your status as being transgender comes under the scope of protection covered by article 8. Any interference with your private right, must be in accordance with the law i.e., it must be based on a rule or policy in the prison, and it must be proportionate.
- Article 9 of the Convention protects the right to religious freedom.
- Article 10 of the Convention protects the right to freedom of expression.
- Article 11 of the Convention protects the right to freedom of association.
- Article 12 of the Convention protects the right to marry.
- Article 14 of the Convention requires that all the rights and freedoms set out in the Act must be protected and applied without discrimination.

There may be circumstances where you consider that your rights have not been respected.

- Your article 8 rights may be engaged if the prison service makes unlawful decisions, by refusing you access to gender affirming clothing, or by failing to allocate you to the correct prison etc.
- Your article 14 rights may be engaged if you are discriminated against, because you are undergoing (or seeking to undergo) gender reassignment, or because you are transgender.

WHAT TO EXPECT FROM STAFF AND OTHER PRISONERS

All prison staff have a duty to comply with the Equality Act 2010. You can read more about this in Prison Service Instruction (PSI) 32/2011 'Ensuring Equality' (which should be available to you in the prison library). Staff also have a duty to comply with the Human Rights Act 1998. If they fail to comply with the Equality Act 2010 or fail to act in keeping with your Convention rights, you may be able to bring legal proceedings against them.

Unfortunately, the Equality Act 2010 only prohibits discrimination by prison officers, as under the Act they are considered a service provider. The Act does not legally stop other prisoners from being transphobic, homophobic, or bi-phobic. That does not mean however that the prison should not act when these incidents arise. PSI 32/2011 makes it clear that staff have a responsibility to take action to address cases of harassment, discrimination, and inappropriate behaviour.

The prison also has a responsibility to address equality issues under the 'Public Sector Equality Duty'. This is a general duty under the Equality Act. When exercising its functions and powers, the prison must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not

The Equality Act explains that the second aim (advancing equality of opportunity) involves having due regard to the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people.
- Encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

An example of how a prison might fulfil its duties under the Public Sector Equality Duty would be to set up LGBTQ groups for prisoners, or make sure that each wing or spur has an Equalities Representative.

SEX IN PRISON & SEXUAL HEALTH

Sex in prison is still very much taboo, but we know it is not uncommon. Prisoners have sex in prison for a variety of reasons, including pleasure, relationships, stress release, trading, and exchange. Sex in prison can be consensual but also can be coercive. It is important to look after your physical and emotional wellbeing when having sex in prison.

If you are a prisoner in the male estate, you should be able to access condoms. Different prisons have different procedures for this. For example, in some prisons these are readily available, whereas in others they are only available on specific request.

Prison Service Order (PSO) 3845 'Blood Borne and Related Communicable Diseases' says that condoms may be prescribed in prison if a doctor deems there is a risk of HIV or STD transmission. We are however aware that condoms can be requested from nurses at healthcare.

As a prisoner you have the same rights to access the same quality and range of services as the general public receives from the NHS. This is stated in in Rule 20 of the Prison Rules 1999 and section 249(1) of the National Health Service Act 2006.

As a prisoner you have the right to access HIV treatment and treatment for any sexually transmitted diseases (STDs). Some prisons operate their own STD clinics, which are operated by outside NHS providers. Your prison healthcare provider should make sure these services are set up for you to use.

PrEP (pre-exposure prophylaxis) is a drug which prevents people from getting HIV. It can be taken by people who do not have HIV but are at high risk of getting it. In March 2020 the NHS announced that PrEP will be available on prescription.

For more information on sexual health in prison contact the Terrance Higgins Trust whose details are below.

Medical confidentiality

Those working in healthcare, whether a GP, nurse or administrative staff have a legal and professional ethical duty to not disclose any of the information you share with them to any other party, without your consent. This is known as the duty of confidentiality. All the information you share with healthcare should remain private and should not be shared with others – including prison officers - other than with your express permission.

This means that whatever is recorded about your health care (e.g., records from appointments with the doctor, dentist, sexual health, mental health nurse) should not be accessible by prison officers (unless you give permission for it to be shared) and your health records are kept separately from your case record files.

The NHS guidelines on Confidentiality provides a 'Confidentiality Model' which all prison healthcare providers should adopt.

Prison healthcare providers should:

- protect your information from being shared
- inform you as how your information will be used and provide a choice to you as to whether you want it to be shared.

Your consultations with either nurses, your GP or healthcare should be conducted in private. This should be out of sight or hearing of prison officers.

Self-harm

We know that transgender prisoners experience a high level of anxiety and distress in prisons, and this can lead to self-harm and self-injury. People engage in self-harm and self-injury for many different reasons, and it is important not to make assumptions or judgments about why someone might self-harm.

If you are self-harming, or you are worried about someone else who is self-harming, you should speak to Safer Custody in the prison. The first point of call is to speak to a wing officer, your personal officer or healthcare. The prison can only help you if they know what is happening and how you are feeling. Family members can also contact the prison on the telephone and ask to speak to safer custody.

You may also want to call the Samaritans on 116 123. This is a free and confidential service (which means that the prison should not listen to your phone calls with them). It should be available to call free from your PIN phone. You can also speak to a Listener within the prison if you feel like you are able to trust them.

REPORTING TRANSPHOBIC ABUSE VIOLENCE TO THE POLICE

Sexual violence or assault in prison is never acceptable. The prison has a duty to protect you from sexual assault and transphobic abuse. If you have been a victim of sexual assault or violence, it is important that you speak to someone you trust to seek support. If you wish to report it, you can contact the Police Liaison Officer in your prison. You can do this by making a wing application. You can also speak to your personal officer. You should never be prevented from reporting these crimes.

We understand at PAS and Bent Bars that reporting these incidents can be a very stressful and emotional time. It might be that you want to discuss what happened to you with healthcare, a friend in prison, or with a legal representative.

What the prison has to do

Where allegations of a serious crime have been made, the prison must refer these to the police. In practice, each prison has a Police Liaison officer and if you want to report a crime you should ask or make an application to see the Police Liaison officer.

Before reporting the incident to the police, the prison will consider whether the case can be dealt with by the Prison Adjudication System, or whether the victim wants the crime to be referred to the police. The Prison Adjudication System will however not be suitable where there has been an allegation of a serious assault or sexual violence.

The police's duty to investigate crime

Not every crime reported to the police will be investigated. However, the police do have a duty to investigate serious sexual and violent assaults. The police should investigate a crime in prison in the same way as if it had happened in the community.

The Victims' Right to Review Scheme

If the police investigate and decide not to bring proceedings where they have the authority to charge, or if they decide not to refer your case to the Crown Prosecution Service (CPS), then you can apply for that decision to be reviewed. This is known as the Victims' Right to Review Scheme.

You will need to write to the local police force who investigated your complaint and ask for a review of their decision. Their contact details will be provided on their official correspondence with you.

You should make a request for a review within three months of being notified of the police's decision. After this time requests for review are dealt with at the police force's discretion. Once you have made a complaint a review should take place and a decision should be communicated to you within 30 days of the date of the request.

The CPS also operates a Victims' Right to Review Scheme. Under the scheme you can write to the CPS and ask them to review their decision if it relates to a CPS decision not to charge someone with an offence or not to prosecute someone. A request for a review should be made within 3 months of the date of the CPS decision not to act.

CELL SHARING

You can ask to share a cell with another LGBTQ prisoner, if you have concerns over your safety, or there are issues with your current cell mate. However, there is no right to share your cell with another LGBTQ prisoner even if you are in a relationship with them.

If you share a cell, you and the person you share with will undergo a cell sharing risk assessment. The assessment will record the level of risk each prisoner poses and whether there are any factors which indicate potential risks. You should not be sharing a cell with someone who is known for violence against the LGBTQ community. If you are, it is important to raise this to a member of staff immediately, either through your personal officer or another officer within the wing office.

The prison has a duty of care towards you to protect you from harm whilst in prison. The prison could be in breach of their duty of care towards you if you are in a cell with a prisoner who is known to commit offences against LGBTQ prisoners. If any harm came to you as a result, then a civil claim in negligence could be issued in the courts and you could be eligible for compensation for any injuries you received. If you ever find yourself in similar circumstances, you should contact a solicitor immediately.

Cell sharing and relationships

Some prisoners form relationships in prison and wish to share their cells with their partner. There is no formal policy on relationships or sex in prison. Relationships and sexual relationships are managed through prison decency policies. PSI 30/2013 imposes a behavioural requirement on prisoners which states, "Acting with decency at all times remembering prisons/cells are not private dwellings (this includes not engaging in sexual activity)." It should be noted however that the Prison Rules do not prohibit sexual acts between prisoners and consensual acts would not count as an offence in and of themselves. PSI 5/2018 states at paragraph 1.111 that "But if two prisoners sharing a cell are in a relationship and engage in sexual activity during the night when they have a reasonable expectation of privacy, a disciplinary charge may not be appropriate."

What does this mean for me?

Practically this means that you can share a cell with your partner. However, if you are caught having sex, then the prison can separate you. In extreme circumstances you may face disciplinary charges.

If this happens you should speak to a solicitor or call, or write to, PAS.

SEPARATE ACCOMMODATION FOR TRANSGENDER WOMEN

As set out above, there is separate accommodation for trans women with a GRC in the women's estate at HMP Downview.

The unit at HMP Downview is for transwomen with GRCs who are assessed as posing a risk of harm to cis women or have displayed disruptive behaviour which means they cannot safely be managed in the women's estate. The unit is separate from the rest of the prison with a restricted regime. It is also where transgender women with GRCs but who the new presumption applies to are likely to be held.

COMMUNICATION WITH LGBT+ PRISONERS, GROUPS AND ACCESSING MATERIALS.

Corresponding with other prisoners

PSI 49/2011 at 2.24 provides that correspondence between convicted prisoners requires the approval of both Governors of the prisons concerned, except where the prisoners are close relatives or where they were co-defendants at their trial and the correspondence relates to their conviction or sentence. The Governor of each prison will have to approve the request before correspondence can be sent.

Prisoners may also be allowed to correspond with ex-prisoners, in the community, subject to any concerns there may be regarding threats to security, and, if on licence, the views of their offender manager.

Communication with LGBT+ organisations

There is no rule against writing to LGBTQ organisations. One potential difficulty, however, is that some organisations use a PO BOX for correspondence.

PSI 49/2011 at 2.25 states that prisoners must not normally be allowed to write to a PO Box number, but if the prisoner does not know the private address of the correspondent, the Governor may, if satisfied that security is not threatened, allow the letter to be sent (this would not normally be an issue where the person/organisation is a recognised body such as the Bent Bars Project, the Samaritans or Alcoholics Anonymous).

If you are having difficulties corresponding with an LGBT+ organisation, you should follow the complaints process to try and resolve it.

Access to LGBT+ reading materials and magazines

Prison Rule 33 says that every prison shall have a library and every prisoner shall be allowed to have access to books and to exchange them.

PSI 02/15 sets out what materials the prison library should stock. It says that the range of stock should reflect the nature and requirement of the prison population and regime. Consideration should be given to the provision of materials in a range of languages. DVDs and computer games with '18' rated certificates are not permitted to be stocked.

Prison libraries should also stock newspapers and magazines. PSI 02/15 and rule 33 of the Prison Rules 1999 provides that these will be stocked within local discretion. If resources allow their purchase, the provision of newspapers and periodicals will reflect the needs of the prisoner population. It is reasonable to expect that a prison library would stock some LGBTQ material. If it does not you can speak to your local prison librarian and request that they obtain some.

Access to materials which contain adult content

PSI 12/11 'Prisoners Property' sets out what items you are allowed to possess in prison. At paragraph 2.19 the policy sets out where materials may be confiscated:

The Governor must temporarily confiscate any newspaper, periodical or magazine or any particular issue, or any book, if he or she considers that the content presents a threat to good order or discipline or the interests of prison or national security, or that possession of the material is likely to have an adverse effect on the prisoner's physical or mental condition

... The Governor must also impose restrictions on the display of material which he or she considers to be likely to cause offence by reason of its indecent or violent content, or to be inconsistent with our commitments to eliminate discrimination and harassment and to promote equality, taking account of local circumstances.

Further guidance as to what is meant by indecent or violent content is provided by the Chapter 10 of NOMS Public Protection Manual (January 2020). It provides that material must not be provided to a prison if it is:

- Obscene within the meaning of the Obscene Publications Act 1959. This covers the publication of material that has a tendency to “deprave and corrupt” those likely to read, hear or see it. No absolute definition of “obscene” is possible; each individual item has to be judged on its own merits. The Crown Prosecution Service (CPS) website has a list of the types of content that might be prosecuted, but this is not exhaustive. It is important to note that obscenity is not confined to images. Written material can be obscene as well, e.g., graphic descriptions of child abuse. Also, obscenity is not limited to material of a sexual nature.
- Uses threatening words and is intended to stir up racial or religious hatred contrary to the Public Order Act 1986 and the Racial and Religious Hatred Act 2006.
- Features children inappropriately (such as indecent or pseudo-photographs of children).
- Extreme pornography (i.e., that the images are pornographic, and they are grossly offensive, disgusting or of an obscene character and portray violent acts).
- Is otherwise sexually explicit. this restriction applies even though the material in question may be legal and/or no longer classified as obscene. “Explicit” means any image of:
 - ejaculation;
 - penetration (whether oral, vaginal or anal); or
 - A young person (whether naked or clothed).
- Promotes or supports acts of terrorism.
- Promotes or supports domestic extremism or radicalisation.
- Is a film, video game or other material to which the BBFC has refused a certificate.
- Is an R18-rated film.
- Is an 18-rated video game - see PSI 30/2013 Incentives and Earned Privileges, paragraphs 10.6 - 10.11.

All decisions to withhold or remove material must be based on an assessment of the effect of the material on the rehabilitation or offending behaviour of the prisoner requesting it, or of other prisoners, crime prevention, or of the effect of the material or its display on good order and discipline.

Other considerations - in particular, anyone’s personal views - should not be taken into account.

Governors’ powers over the display of materials are wider than over their possession: while it may be possible to ban some items from display because of their capacity to cause offence to others, it will not usually be reasonable to prevent their possession solely for that reason.

Any restrictions adopted (including completely withholding materials) must be necessary and proportionate to the nature of the risk and must be the least needed to address that risk. Proper account must be taken of the prisoner’s right to receive information and the general HMPPS policy of not applying censorship. These must be balanced against the potential harm before a decision is taken.

LGBT+ INITIATIVES IN PRISON

Some prisoners find it helpful to create support networks in prison by setting up LGBT+ groups and events. However, the opportunity for such activities varies across the prison estate. Some prisons have LGBT+ groups that prisoners can join. Some even organise pride activities.

If your local prison does not have much to offer by way of LGBT+ projects or groups, your first port

of call should be speaking to your Equalities Representative on your wing or the prison's Equalities Officer.

Prisons have a duty, known as the Public Sector Equality Duty (referred to above) to advance equalities opportunities. If your prison does not have a LGBT+ group, they have a duty to consider whether one would help eliminate discrimination. If after taking the relevant steps, the prison still refuses to provide LGBT+ projects or groups then you should consider whether you wish to make a complaint.

WHAT TO DO IF YOU THINK YOUR RIGHTS ARE NOT BEING RESPECTED

Making a COMP1 or DIRF complaint

If you feel that you have been a victim of discrimination or that your human rights have been breached, there are number of steps you can take.

- First, you can speak to a friend, or your Equalities Representative on your wing and liaise with them.
- Second, you can speak to your Equalities Officer, who will be an employed member of prison staff. You can make an application on your wing to see them.
- Third, you can submit a complaint, either by a COMP 1 (a standard complaint form) or a DIRF (Discrimination Incident Reporting Form used for when you are complaining about discriminatory behaviour). These can be found on your wing or in the prison library. There should also be envelopes available for you to submit them confidentially.

Prisoners' Complaints are dealt with in the Prisoner Complaints Policy Framework. The framework provides that:

- Complaints should normally be submitted within three months of the incident or of the circumstances which give rise to the complaint, or the date on which they became known to the prisoner.
- Complaints should be posted into the locked 'Complaints' boxes on the wings.
- You should normally receive a response to a COMP1 within five working days (10 working days if your complaint involves another establishment or is against a member of staff).
- If you are not satisfied with the response, you can submit a COMP1a ("Stage 2" appeal) or a further DIRF.
- If you are unhappy with the "Stage 1" response to a COMP1 (meaning the initial response to your complaint), you have a time period of seven calendar days to make a "Stage 2" appeal to management on a COMP1A form. You can expect a response to a COMP1A within five working days.
- Fourth, you can make a complaint to the Prison and Probation Ombudsman (PPO). The PPO is independent from the prison service and if it accepts your complaint, you will be allocated a caseworker who will investigate (see information on the PPO below)
- Finally, you may wish to consider obtaining legal advice and taking legal action. This can be done at any stage; however, a solicitor will need to see evidence of complaints and the responses you have received in order to fully advise you of the next best steps in your case

At any point during this process, you can also call, or write to, PAS for advice and support.

How the prison should deal with DIRF complaints

PSI 32/2011 'Ensuring Equality' in Annex F provides specific guidance as to how DIRFs should be processed. The PSI states that:

- All DIRFs must be logged by the prison.
- If a DIRF concerns a serious incident and/or allegation of misconduct by staff that is usually referred to an investigation.
- Prisoners must be informed of what is happening with their complaint and any outcome of the investigation.
- DIRFs concerning other issues that do not amount to a serious incident or misconduct by staff should be handled by a manager.
- As part of the complaint process you should be interviewed by the manager, and they should explore with you the issue that you have raised.
- The manager should then seek to address the issue through appropriate means, which may include informal conflict resolution, action through systems such as IEP, adjudications etc., or specific action to expedite an outcome.
- A written response explaining the action taken should be sent in all cases.
- Where a prisoner is not satisfied about the outcome of a DIRF about an incident to which they have been subjected, they should submit a stage 2 complaint. A stage 2 complaint is explained below.

Stage 2 Complaints

If you are unhappy with the “Stage 1” response to a COMP1 (meaning the initial response to your complaint), you have a time period of seven calendar days to make a “Stage 2” appeal to management on a COMP1A form. You can expect a response to a COMP1A within five working days.

The Prisons and Probation Ombudsman (PPO)

If you are unhappy with the response to a stage 1A appeal, you should contact the Prisons and Probation Ombudsman (PPO) at:

The Prisons and Probation Ombudsman Third Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU

- The PPO is independent from the prison, and you will be allocated a caseworker who will get all the documents from the prison about what happened to you.
- A finding by the PPO that you have been discriminated against is important. The PPO can also award you compensation and ask that the prison apologise to you
- The time limits for complaints to the PPO are based on the date that you receive the final response from the prison and are set out as follows:
 - You must submit your complaint to the PPO within 3 months of receiving the final response from the prison.
 - If you have not received a final response from the prison within 6 weeks of the final stage of the complaint you can contact the PPO (in practice, they will rarely take the complaint at this point but should contact the prison to see why they have not replied to you).
 - Unless there are exceptional circumstances your complaint must be submitted within 12 months of the actual events complained of.

Confidential Access Complaints

If your complaint relates to a specific staff member and you do not wish them to see your complaint, you should use the confidential access system by completing a COMP2. Always read the notes on the form carefully to see if your complaint is suitable for confidential access. You should normally receive a response to a COMP2 within five working days if addressed to the Governor / Director, or within six weeks if addressed to the prison group Director / the Director’s Line Manager.

If you think your complaint is suitable for confidential access, place the complaint in the envelope and seal it. Then address it to the person who you want to read it. This must be one of the following: the Governor / Director of the prison where you are held, the prison group Director /the Director's Line Manager in a contracted prison, or the Chair of the local Independent Monitoring Board (IMB). Then, post the envelope in the 'Complaints' box. The envelope will only be opened by the person to whom it is addressed. Also, written submissions may be sealed in an envelope, marked Confidential Access and posted in the 'Complaints' box.

The Independent Monitoring Board (IMB)

The IMB is responsible for monitoring the treatment of prisoners to check it is fair, just and humane. By law every prison must have an IMB and, although it does not constitute a stage in the formal complaints' procedure, prisoners can complain to the IMB and ask them to investigate matters within the prison for them. Forms to make an application to the IMB should be available on your wing. You should fill out the form and put it in the box marked 'IMB'.

Legal Claims

If your complaints are not resolved by the prison service, you may want to consider taking legal advice to see if you can take legal action.

In order to obtain the correct legal advice, you will need to have secured evidence relating to your case, by taking the above practical steps via complaining or speaking to officers.

It is important that you make a complaint as soon as an event happens. You need a clear paper trail in order to show that the prison has acted in an unlawful way. Use the information above in order to point out to the prison that what they have done is unlawful.

We understand that complaints can get lost. We would advise you to keep a separate note of the complaints you have made in case they do get lost. That way you will have a separate log of all the events. You may also want to approach other prisoners or other members of staff to see if they are willing to support you or confirm your side of the story. If they have viewed the incident directly themselves, they can also make a complaint.

Once you have made a complaint you will need to consider whether the response you receive deals with your complaint adequately. If it does not, you may want to approach a solicitor to see if they are able to provide you with advice as to whether you can bring a legal claim.

Types of civil claim

There are two types of claims that prisoners can bring if they feel they have been discriminated against, or if they feel their human rights have been breached: (1) a civil claim; or (2) a judicial review. These are explained below:

(1) Civil claims

Civil claims usually concern events that have happened in the past and are not to do with ongoing treatment.

For example, if in the past 6 months you may have been subject to transphobic treatment by a prisoner officer, and this has not occurred again, in those circumstances you may be able to bring a claim for discrimination against the prison, and or a claim for a breach of your article 8 Convention rights.

Both human right claims and discrimination claims have what are known as time limits. These are limits

imposed by the law to make sure that you bring your case to court in time.

For most discrimination cases the time you have to bring your case to court is 6 months. However, if you are subjected to a series of incidents involving discrimination, the time runs from last date on which you were discriminated.

For Human Rights Act 1998 cases the time limit in which to bring your case to court is within one year of the date of the decision or action you are complaining about.

For negligence claims, the time limit in which to bring your case to court is 3 years, if you have suffered a personal injury (i.e., either a physical or mental injury) or 6 years if you have not suffered an injury.

Time limits are very important in civil claims, so it is always best to act quickly. It is always important to identify whether you have a claim so that the above time limits can be adhered to. If you are unsure whether your claim is valid, one of Prison Advice Service's caseworkers will be able to assist you.

(2) Judicial review

Another type of claim is known as judicial review. This is a procedure where you challenge a particular decision as unlawful by asking a Judge to review it.

Judicial review concerns decisions made by prison staff and officers, or failures of prison staff and officers and the treatment is ongoing.

A judicial review claim must be brought within 3 months of the date of the decision you are challenging.

Legal Aid

Legal Aid (public funding) may be available to take actions for judicial review and to bring civil claims for breaches of the Equalities Act 2010 and the Human Rights Act 1998. In the majority of cases a solicitor can make an application on your behalf to claim Legal Aid. An application for Legal Aid is subject to a merits test (i.e., how likely it is that you will win your case) and a means test (i.e., how much money you have available to you).



ORGANISATIONS THAT CAN HELP WITH LGBT+ ISSUES

PRISONERS'

ADVICE

SERVICE

JUSTICE BEHIND BARS

PRISONERS' ADVICE SERVICE

PAS offers free legal advice and support to adult prisoners throughout England and Wales regarding their human and legal rights, conditions of imprisonment and the application of Prison Law and the Prison Rules. We can also advise on matters of Family Law, and of Immigration Law to prisoners with issues relating to detention or deportation.

We pursue prisoners' complaints about their treatment in prison and, where appropriate, we take legal action on their behalf. Examples of issues PAS can advise upon include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, contact with children, resettlement and healthcare matters.

If you would like to speak to a Caseworker at PAS, call us on: **020 7253 3323**

Our Advice Line is open on Monday, Wednesday and Friday between 10am and 12.30pm, or 2pm and 4.30pm, or on Tuesday evening between 4.30pm and 7pm.

Or write to us at: **Prisoners' Advice Service, PO Box 46199, London EC1M 4XA**

(When writing, mark your envelope, "Legal Mail Rule 39". This ensures the letter is not opened by prison staff.)



THE BENT BARS PROJECT

The Bent Bars Project is a letter-writing project for lesbian, gay, bisexual, transgender, transsexual, gender-variant, intersex and queer prisoners in Britain.

The project was founded in 2009 in response to a clear need to develop stronger connections and build solidarity between LGBTQ communities inside, and outside, of prison walls.

Bent Bars aims to work in solidarity with prisoners by sharing resources, providing mutual support and drawing public attention to the struggles of queer and transgender people behind bars.

The project also collects and distributes information for LGBTQ prisoners on a range of issues, including: harm reduction practices (safer sex and safer drug-use), HIV and HepC prevention, homophobia, transphobia, coming out in prison.

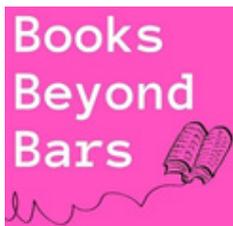
If you would like to sign up to the Bent Bars letter-writing project, write to us at: **Bent Bars Project, PO Box 66754, London WC1A 9BF**



BLACKOUT UK

BlackOut UK is a not-for-profit social enterprise run and owned by a volunteer collective of black gay men. They aim to encourage and stimulate debate and discussion online and face-to-face through their website, writer workshops, networking events, and supporting interventions to meet the needs of black queer men.

You can contact them via email at:
blkoutuk@gmail.com



BOOKS BEYOND BARS

Books Beyond Bars send books and other educational materials, free of charge, to incarcerated LGBTQIA+ people across the United Kingdom.

If you would like a copy of their main order form (or a discreet version with the full name of the project and any specific reference to LGBTQIA+ content removed), you can contact them via email on: **booksbeyondbarsuk@gmail.com**

Completed order forms can be sent to:
Books Beyond Bars, PO Box 5554, Manchester, M61 0SQ



ELOP

ELOP is a holistic lesbian and gay centre that offers a range of social, emotional and support services to LGBT communities. Core services include counselling and young people's services.

They can be contacted by telephone on:
020 8509 3898; or email them at:
info@elop.org



GALOP

Galop supports lesbian, gay, bisexual and trans people experiencing hate crime, domestic abuse or sexual violence.

Call their National Lesbian, Gay, Bisexual and Trans+ Domestic Abuse Helpline on:
0800 999 5428

Their email is: **advice@galop.org.uk**



PETER TATCHELL FOUNDATION

The Peter Tatchell Foundation provides help and support to hundreds of victims of human rights abuses, including homophobia, biphobia and transphobia.

Call the foundation on: **020 3397 2190**

Or write to them at: **The Peter Tatchell Foundation, 14 Marshalsea Road, London SE1 1HL**



GENDER AGENDA

Gender Agenda exists to raise awareness of, and to train/consult/educate on, LGBTIQ issues, particularly on issues of Trans, InterSex and Queer/Fluid/Non-Binary gender. Experienced in working with prisons and the police. Key areas of work include: advice and information; advocacy; counselling; discrimination; domestic abuse; gender; mental health.

Gender Agenda is also able to interpret, and help in implementing, LGBTIQ rights under the Equality Act 2010.

Call them on: **07808 970429**

Or write to: **Zone 5, Wrentham Business Centre, Prospect Park, Exeter, EX4 6NA**



GENDERED INTELLIGENCE

Gendered Intelligence is a charity whose mission is to increase understanding of gender diversity. It works with the trans community and those who impact on trans lives.

Gendered Intelligence does not provide an advice or support service. However, it does have a large variety of resources dealing with trans issues.

You can call the Gendered Intelligence office on: **0207 832 5848** between 9am and 6pm.

Or write to: **VAI, 200a Pentonville Road, London N1 9JP**

**PRISON
REFORM
TRUST**

PRISON REFORM TRUST

The Prison Reform Trust (PRT) is an independent UK Charity working to create a just, humane, and effective penal system. They offer advice and information to prisoners and their families.

You can call their Prisoners' Families Helpline on: 0808 808 2003 between 9am and 8pm. A short voicemail can also be left on the Advice and Information Service on : **0808 802 0060**

Or write to them at: **Prison Reform Trust, FREEPOST ND 6125, London EC1B 1PN**

Alternatively you can email at:
advice@prisonreformtrust.org.uk



SAMARITANS

The Samaritans work to reduce suicide and self-harm in prisons, where prisoners are between five to ten times more likely to take their own lives than those on the outside.

If you are self-harming, or you are worried about someone who is, you can call their Helpline. All prisons are required to allow prisoners access to the Samaritans' Helpline free of charge.

Their Helpline number is: **116 123**

Or write to them at: **Samaritans, Freepost RSRB-KKBY-CYJK, PO Box 9090, Stirling FK8 2SA**



SWITCHBOARD LGBT+ HELPLINE

Switchboard provides an LGBT+ Helpline, offering a safe space for anyone to discuss LGBT+ related issues, including sexuality, coming out, gender identity, sexual health, abuse and emotional wellbeing.

You can call the Helpline on: **0300 330 0630** – it is open 10am to 10pm every day.

Their address is: **Switchboard, PO BOX 7324, London N1 9QS**



STONEWALL

Stonewall was founded in 1989 by a small group of people who had been active in the struggle against Section 28 of the Local Government Act. They work to empower individuals, and focus on changing and protecting laws to ensure equal rights for LGBT people.

You can contact their information service (freephone) on: **0800 050 2020**, Monday to Friday 9.30am to 4.30pm

Or write to them at: **Stonewall, 192 St. John Street, London, EC1V 4JY**



THE TERRENCE HIGGINS TRUST

The Terrence Higgins Trust is the UK's leading HIV and sexual health charity. Its aim is to contribute to the end of HIV transmissions, improve sexual health and support people living with, and affected by, HIV and poor sexual health. It ensures that the voices of people affected by HIV are heard.

If you would like advice and information about HIV, call THT Direct on: **0808 802 1221**

Or write to: **Terrence Higgins Trust, 314-320 Gray's Inn Road, London WC1X 8DP**

UK BLACK PRIDE

UK BLACK PRIDE

Alongside the official annual UK Black Pride Event, the organisation also provides community outreach and advocacy for the experiences of the UK's black LGBT community.

Their email address is:
Josh@ukblackpride.org.uk



UK LESBIAN & GAY IMMIGRATION GROUP (UKLGIG)

The UK Lesbian & Gay Immigration Group supports LGBTQI+ people through the asylum and immigration system. They provide psychosocial and emotional support for LGBTQI+ people seeking asylum to help improve their confidence and self-esteem and reduce isolation. They also provide legal information and advice, and campaign for improved treatment of people seeking asylum.

If you require support or advice you can call on: **020 7922 7811**, Monday to Friday during Office hours.

Or write to them at: **UKLGIG, CAN Mezzanine – Borough, 7-14 Great Dover Street, London, SE1 4YR**

WOMEN IN PRISON



Women in Prison delivers independent, non-judgmental and friendly support to women across the women's prison estate.

You can call WiP on freephone
0800 953 0125

Or write to: **Women in Prison (Freepost), 2nd Floor, Elmfield House, 5 Stockwell Mews, London SW9 9GX**

GLOSSARY

Below are some terms which are used in this Toolkit and may be useful more generally. It is important to note, that language, definitions and terminology often evolve and change. This is particularly the case with language around gender identity and trans identities. It is also important to recognise that people may choose a range of terms to describe their own identity and it is important to respect people's preferences.

Acquired gender - used to describe a person's gender after transitioning. This is a legal term. Many people now prefer to use the term "affirmed" gender (below).

Advanced disclosure – used to describe the information you should receive before you have a meeting with the Local Case Board or the Complex Case Board.

Affirmed gender – used to describe a person's gender after transition, rather than the gender that was assumed based on the sex they were assigned at birth.

Assigned sex or assigned gender - the sex/gender that was assigned to someone at birth, usually based on their physical characteristics.

Complex case board – used to describe a review process where a number of senior professionals within the Ministry of Justice meet to discuss your case. Only complex case boards have the power to move you to either the male or female estate.

Cross dresser - someone who chooses to wear clothes not conventionally associated with their assigned gender. "Cross dresser" is now used in preference to the term "transvestite", which is considered to be outdated and can cause offence. Cross dressers are generally comfortable with their assigned gender and do not intend to transition.

Gender dysphoria - used when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity. This is also a medical term.

Gender expression - how someone chooses to express or convey their gender identity in the context of societal expectations, for example through their appearance and behaviour.

Gender / Gender identity – the gender that a person identifies as; a person's conception of their gender, their sense of self (e.g., if you identify as a man, or a woman or as non-binary). For trans people, their gender identity usually does not match the gender they were assigned at birth.

Gender reassignment (or transitioning) - the process where an individual changes their expressed gender to live in the gender with which they identify. For example, a person who was assigned female at birth might decide to take steps to live the rest of their life as a man. Gender reassignment does not require medical treatment and is a protected characteristic under the Equality Act 2010.

Gender Recognition Certificate (GRC) – a document that confirms a trans person is legally recognised in their affirmed gender (i.e., a gender that is different to what they were assigned at birth). A GRC also enables a person to be issued with a new birth certificate. Not all trans people will apply for a GRC, and you currently must be 18 to apply. You do not need a GRC to change your gender markers at work or to legally change your gender on other documents such as your driver's licence, bank cards or passport.

Intersex - an intersex person may have the biological attributes of both sexes or those that do not fit with societal assumptions about what constitutes a male or female. An intersex person may self-identify as a man or a woman or neither.

Local Case Board – used to describe professionals that meet at your local prison to discuss issues as to how you can best be managed and cared for within your prison. A Local Case Board does not have the power to move you to a male or female prison.

Non-binary - an umbrella term to describe people whose gender identity is “fluid” and not exclusively male or female. A non-binary person may identify as neither male nor female or may feel that they embody elements of both genders, or that they are something different. The terms intersex and non-binary are not interchangeable; however, an intersex person may identify as non-binary.

Non-trans person – Someone whose gender identity is the same as the sex they were assigned at birth. E.g., A person who was assigned male at birth and still identifies as male/lives as a man. Another similar term is ‘cis-gender’ which is used by some people instead of non-trans. “Cis-” is a prefix meaning “on the same side as,” and is therefore the opposite of “trans- which means to cross or change.

Prison Service Instruction/Order – this is a term used to refer to guidance that is issued by the Ministry of Justice.

Trans or Transgender - an umbrella term describing the diverse range of people whose gender identity or gender expression differs from the gender they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including but not limited to: transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, two-spirit, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutral.

Transgender Man – a person who was assigned female at birth but identifies and lives as a man; a female-to-male person.

Transgender Woman – a person who was assigned male at birth but identifies and lives as a woman; a male-to-female person.

Transitioning - the steps a trans person may take to live in the gender with which they identify. Each person’s transition is personal to them and will involve different things. For some this involves medical intervention, such as hormone therapy or surgery but this is not the case for everyone. Transitioning might also mean telling friends and family, dressing differently and changing official documents.

Transsexual – originally used as medical term to describe someone who has undergone gender reassignment. This term is still used by some, but many people prefer the term ‘trans’ or ‘transgender’.

Transphobia - a fear of or a dislike of trans people. It is based on prejudice and misunderstanding and can involve verbal abuse, physical violence and other forms of harassment.

Sex - The classification of a person as male or female. At birth, babies are assigned a sex, usually based on the appearance of their external anatomy. (This is what is written on the birth certificate.) A person’s sex, however, is actually a combination of bodily characteristics including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics.

ACKNOWLEDGMENTS

Stuart Withers, Barrister, No. 5 Chambers – Author

Sarah Lamble, Bent Bars Project – Advisor

Chryssy Hunter, Bent Bars Project – Advisor

Michelle Brewer, Garden Court Chambers – Advisor

Deborah Russo, Solicitor (formerly PAS Co-Director) – Advisor

Jane Ryan, Solicitor, Bhatt Murphy – Advisor

Geof Jarvis, Head of Fundraising and Communications, PAS – Co-ordinator and Editor

The first edition of this guide was kindly supported by
The Tudor Trust and The Paul Cottingham Trust



A PRISONER'S GUIDE TO TRANS RIGHTS

2nd edition (December 2023)

PRISONERS'

ADVICE

SERVICE

JUSTICE BEHIND BARS

connect with us



www.prisonersadvice.org.uk

Prisoners' Advice Service is registered in England & Wales with
Charity No. 1054495 and Company Limited by Guarantee No. 3180659