



STAFFORDSHIRE
POLICE

Board Paper

Board Name: COT/EMB

Section 1: Summary

Meeting Date	30th May 2025
Agenda Item	Transgender Search Policy
Title	Transgender Search Procedures and Guidance
Command	Force Contact and Ops.
Author	Supt [REDACTED]
HOD approval Ch Supt/Supt/Police Staff Equivalent	
Chief Officer Approving	[REDACTED]
Purpose of item	☐ For decision/approval ☐ For input/discussion ☒ For information/update

Brief description of the item (including matters of note and options if for decision)

The Transgender Searching Guidance gives the force an interim guide for the following:

- Searching Trans-detainees in custody
- Searching persons in custody by Trans-employees.
- A reference to the Stop Search Guidelines

This paper is submitted for executive awareness outlining the current national position. The Force has now received guidance from the NPCC in May 2025 following the National Advisory group being established. Meanwhile, Staffordshire continues to be an active member of the advisory group.

This paper outlines the national proposed recommendations and provides a discussion point to direct Staffordshire's position, considering both our legal position and Policing Plan ambitions:

- Becoming an Employer of Choice
- Creating a diverse and inclusive workforce.

Scale of investment

(Only for items for decision/approval)

N/A

Recommendation to the Board i.e.: preferred option or key matters for discussion/update

Background

The NPCC Recommended Guidance – Searching by Transgender Officers of the Police introduced in 2021, was withdrawn in January 2024 in response to the following challenges:

- The Equality Human Rights Commission (EHRC) advised the guidance was unlawful.
- Legal opinion is divided as to how PACE, the Equality Act and the Gender Recognition Act work together on this matter.
- Guidance was questioned in the Home Affairs Select Committee by the then Chair and now Policing Minister Dame Diana Johnson, following the publication of the Sex Matters "State Sanctioned Sexual Assault" document.

The previous guidance proposed that police officers and staff could search in line with their lived gender and used Annex L Code C PACE as its underpinning principle.

L5 Chief Officers are responsible for providing corresponding operational guidance and instructions for the deployment of transgender officers and staff under their direction and control to duties which involve carrying out, or being present at, any of the searches and procedures described in paragraph 1. The guidance and instructions must comply with the Equality Act 2010 and should therefore compliment the approach in this Annex.

Since the withdrawal, significant consultation has taken place to inform the revised guidance and whilst none of the legislation has changed within this timeframe, police forces continue to attempt to navigate the challenges presented and conduct lawful searches.

Summary of Guidance proposed

As an interim measure and following extensive legal advice and engagement, police will undertake searches exposing intimate parts (EIP) or more thorough searches in accordance with PACE which states that these searches must be conducted with **officers of the same biological sex as the person being searched**.

Policing remains committed to serving all members of the public with fairness, dignity, and respect, including the Trans community. The police have a duty to respect Article 8 rights. Therefore, as far as operationally viable, where an individual whose lived in gender is not

the same as their biological sex expresses a preference to be searched by an officer of their lived gender, efforts will be made to ensure an appropriate officer is identified to conduct the search. In such circumstances, the search would require the written consent of the authorising officer, the person detained and the particular officer/s conducting the search.

In terms of what that means for our trans colleagues:

- A trans officer will search in line with biological sex.
- A trans officer can be exempt from searching, and cannot be given a lawful order to search. There will be no career detriment to the officer or member of staff.
- A Trans officer cannot search a detainee not of the same biological sex even if the detainee agrees. The purpose of the proposed consensual regime is to preserve the integrity and dignity of trans detainees who are in custody where the alternative of a PACE search might amount to an interference with their Art 8/Art 3 rights. The same does not apply to an officer.
- A Trans officer can search a trans detainee if both the officer and the detainee are of the biological sex this complies with the interim guidance. If the officer and the detainee are of different biological sexes, both the officer and the detainee would need to consent with the search.

The NPCC have also suggested that forces speak to the workforce, unions, relevant staff networks and any other stakeholders in order to understand their views on the guidance before making any decisions on its adoption.

Next Steps Following National Guidance being Issued

- The NPCC will continue to work with stakeholders on progressing legislative change.
- It is suspected that criticism and legal challenge may follow from Women's Rights Groups based on the legal consent for trans officers to search in possession of a GRC and Transgender communities due to the perceived breaches of the Equality Act for those transitioning. A form of words has been prepared and shared with comms colleagues to ensure a National Communication strategy, to mitigate against an individual force being subjected to both media criticism and legal challenge.
- Staffordshire's Force policy (Copy Attached) has been amended and does align with the anticipated recommendations.
- Consultation with personally affected persons has commenced with confidential 121 conversations with [REDACTED] and [REDACTED] for reassurance, to provide guidance and remove any anecdotal concerns. A local communication strategy will also provide an opportunity for interested colleagues to have confidential sessions to allow the free discussion of concerns. This process was successful following the release of our interim process.
- Staff Networks have been engaged and a meeting will take place on Thursday 29th May 2025. Verbal update to follow.
- A temporary mandate on FOIs will be shared with the Central FOI Referral Unit so the team can assist with the response, while a suggested reply to the Women's Rights Network, which has recently written to forces.
- An equality impact assessment has been carried out by the NPCC for the guidance and Staffordshire Police has requested a copy.

- The NPCC will be leading an internal community impact assessment to understand the reaction to and impact of the Supreme Court decision across policing. We will support this process when it launches.
- The NPCC are continuing to consider other policies and practices following the Supreme Court decision, such as the provision of toilets and changing rooms.
- The College of Policing and NPCC are also reviewing its protected characteristics data standards, working alongside the likes of the Office for National Statistics as well as the Office for Statistics Regulation.

Legal implications

Please consider any legal matters for consideration or legal advice you may need to obtain from Joint Legal Services

■■■■■■■■■■, ■■■ alongside ■■■ have both advised it is highly likely that there will be a challenge to any guidance produced whether by the NPCC or an individual force. Indeed, BTP are already facing such a challenge. This is because there are so many conflicting views.

If the NPCC limits the guidance to all searches being on the basis of the same biological sex with no consensual element, whilst this is entirely consistent with Part V PACE, this approach has its own, significant risks. If this guidance is maintained in a JR, it will be taken as acceptance on the part of the NPCC on behalf of all forces that searches in custody are limited to statutory same sex searches.

This undermines the legality of all the “treated as” searches which have taken place (apparently without objection) in over a decade under Annex L, because if this interpretation of the legislation is correct, those searches must have been unlawful. The policy is also highly likely to be challenged by the transgender community (both officers and detainees) because it fails to recognise or protect their rights. It is likely that they would argue that their Article 8 and/or Article 3 rights have been breached. If the consensual search element is included then “Sex Matters” is already challenging that aspect of the guidance as set out above.

Whilst such a review takes pace, or is proposed, the following enactments should be understood;

- Note L5 of Annex L to the Police and Criminal Evidence Act 1984 (PACE 1984) Code C.
- Section 117 PACE 1984; Provides the authority of a constable to use reasonable force when exercising a power conferred by the act, as long as the power does not require consent from someone other than a police officer.
- Equality Act 2010 and the principles of Protected Characteristics.
- The Gender Recognition Act 2004, Sec 9: Acquired gender recognised in law.
- Human Rights Act 1998, Article 8.
- Health and Safety at Work Act 1974.

Discrimination

Trans people are protected from discrimination under the Equality Act 2010 once they have advised that they propose to transition, start transitioning or complete their transition. This does not mean that they are undertaking any medical interventions. There are circumstances in which indirect discrimination is permissible. Indirect discrimination happens when an organisation has a particular policy or way of working that puts people with the protected characteristic of gender reassignment at a disadvantage. There are circumstances where indirect gender reassignment discrimination can be permitted if the organisation or employer is able to show that there is a good reason and a legitimate purpose for the indirect discrimination.

Definitions

For the purpose of this guidance, definitions of the terms used are explained below:
Gender Reassignment is the decision to change one's gender identity, which may or may not involve medical or surgical treatment. More colloquially known as transgender.

Transgender/trans – a person whose gender identity differs to that observed and recorded at birth. This covers persons who are intending to undergo, are undergoing, or have undergone transition at any stage and those who have no plans to undergo medical interventions such as surgery or hormones.

Non-binary – a person who identifies as in some way outside of the man-woman gender binary. They may regard themselves as neither exclusively a man nor a woman, or as both, or take another approach to gender entirely. The word non-binary is used here as an umbrella term. Different people may use different words to describe their individual gender identity, such as genderfluid, agender or genderqueer.

Stop/Search – often referred to as a rub down. A police officer has powers to stop and search if they have 'reasonable grounds' to suspect a person is carrying:

- illegal drugs
- a weapon
- stolen property
- something which could be used to commit a crime.

The officer conducting the stop/search can ask for the removal of jacket, outer garments and gloves. These tend to be carried out in the street. Should an officer ask an individual to remove further layers of clothing or religious articles this must be conducted out of public view. A stop/search does not need to be conducted by an officer of the same sex as the detainee,

Strip Search not in Custody – also referred to as Exposure of Intimate parts. Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search. Searches involving exposure of intimate parts of the body may be carried out only at a nearby police station or other nearby location which is out of public view. Unless there is a matter of urgency, there must be two officers present during the search. The person being searched should not be required to remove all clothing at the same time (should be clothed on the top of their

body whilst the below is exposed and vice versa). The officers must not touch any of the intimate parts being exposed and is a visual search only. The detainee may be asked to hold their arms in the air and stand with legs apart. This type of search should be conducted by an officer of the same sex as the detainee.

Search after arrest – This search is conducted to ensure that the person being detained does not have items on their person which could harm themselves or others, assist with escape, be evidence of an offence and to prevent the destruction of any evidence of an offence. A search after arrest does not need to be conducted by the same sex as the detainee but best practice usually means that it is where practicable.

Strip search in Custody - A strip search may take place only if it is considered necessary to remove an article which a detainee would not be allowed to keep and the officer reasonably considers the detainee might have concealed such an article. This is authorised by a sergeant. Strip searches shall not be routinely carried out if there is no reason to consider that articles are concealed. Unless there is a matter of urgency, there must be two officers present during the search. The person being searched should not be required to remove all clothing at the same time (should be clothed on the top of their body whilst the below is exposed and vice versa). The officers must not touch any of the intimate parts being exposed and is a visual search only. The detainee may be asked to hold their arms in the air and stand with legs apart. This type of search should be conducted by an officer of the same sex as the detainee.

Intimate Search in Custody - An intimate search consists of the physical examination of a person's body orifices other than the mouth. This is authorised by an inspector. The person being searched must also provide their consent to the search being conducted. The intrusive nature of such searches means the actual and potential risks associated with intimate searches must never be underestimated. An intimate search may only be carried out by a registered medical practitioner or registered nurse, unless an officer of at least inspector rank considers this is not practicable. Where the intimate search is not conducted by the medical professional, two officers must be present during the search.

Consultation:

(Only for items for decision / approval) Tick those consulted

Department (Tick those consulted)	Name	Signature (electronic)	Date
Finance ☐			
HR ☒			
Equality Impact Assessment completed ☐			
PPMO ☐			
Joint Legal Services ☐			
Staff Associations/Networks ☐			
COT ☐	Date (if) presented at COT:		

Consultation Detail/Outcome/Advice:

[Redacted]
 [Redacted]
 [Redacted]
 Corporate Communications [Redacted]
 Head of CJ [Redacted]
 NPCC Lead national advisor [Redacted]
 Transgender Lead UK Policing [Redacted]
 Unison, Police Federation, Supts Association Reps
 Staffordshire Support Networks

Previous Governance Route & Outcome:

COT and EMB: a track record of versions of this guidance going into COT and EMB is available. First discussion point being January 2024.

Links to current Risks, Issues and priorities:

For Trans Officer/Staff the following guidance has been given and raises the associated points:

Who will a trans officer search?

A trans officer will search in line with biological sex.

Can a trans officer or member of staff be exempt from searching?

A trans officer can be exempt from searching. There will be no career detriment to the officer or member of staff. Following discussions with Staff Network colleagues, a RAP can be put in place which will prevent officers or staff having to explain reasons behind not being able to search. This will be in conjunction with comms to custody colleagues and L&OD Colleagues delivering custody course training,

Will a trans officer be given a lawful order to search?

No

Can a transgender officer search a detainee not of the same biological sex if the detainee agrees?

No - The purpose of the proposed consensual regime is to preserve the integrity and dignity of trans detainees who are in custody where the alternative of a PACE search might amount to an interference with their Art 8/Art 3 rights. The same does not apply to an officer. Again, appropriate comms will be provided to custody staff, alongside L&OD for new Sgts/CDO training.

Can a transgender officer search a trans detainee?

Yes, if both the officer and the detainee are of the same sex this complies with the interim guidance. If the officer and the detainee are of different biological sexes, both the officer and the detainee would need to consent with the search.

Can a detainee refuse to be searched by a trans officer?

Yes, as is current operational practice officers will be swapped out if a detainee refuses the search by a trans officer.

What if a trans detainee consents to the search by an officer of their lived gender but then retracts consent?

The search will then need to be completed by an officer of their biological sex.

Can a trans detainee ask for a separate area search depending on anatomical presentation?

Yes, a trans detainee can ask for a separate area search. (One half of their body to be searched by one biological sex officer and the other half of their body to be searched by a different biological sex officer.) This is detailed in our policy for a two-stage approach to strip searching which would require 2 pairs of biological sex officers to search.

What if a trans detainee wants to be searched in line with lived gender but no officer can be found who is willing to conduct the search?

The detainee should be placed on a constant watch until a willing officer is found. Should this not occur within a reasonable time or the risk be deemed too great, the search will be completed by officers of the same biological sex.

The term "reasonable" is commonly used in legal contexts to represent the fairness or rationality of a particular action given the circumstances. It is a highly contextual term and can change depending on circumstances.

What if the sex of the detainee cannot be determined?

A conversation should be undertaken with the detainee to establish sex for the purpose of a search. If the detainee engages, act as per questions above. If the detainee will not engage, conduct the search in line with documentation or presentation until sex can be established.

Reference documents/attachments:

NPCC Interim Suggested Womens Chief Constable
Transgender Search G Rights Network reply.Update NPCC Interim



Transgender
Searching Guidance

Policy Guidance Version 6

Produced by Staffordshire Police
for FOI 23187

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