

CITY OF WOLVERHAMPTON COUNCIL

Human Resources Policy Framework

Transsexual, Transgender and Gender Reassignment Policy

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Transsexual, Transgender and Gender Reassignment Policy

1.0 Policy Statement

- 1.1 City of Wolverhampton Council (the Council) is committed to recruiting, retaining and developing employees from a wide range of backgrounds and of the highest calibre by applying principles of fairness, consistency and equality in recruitment and employment practices and systems.
- 1.2 The Council believes that transsexual and transgender employees must be treated with dignity and respect, and be permitted to perform their jobs free from harassment and discrimination.
- 1.3 This policy incorporates the legislative responsibilities under the Equality Act 2010, the Human Rights Act 1998, the Data Protection Act 1998 and the Gender Recognition Act 2004.
- 1.4 Breaches of this policy will be dealt with under the Council's Disciplinary Procedures and/or Grievance Procedures. Allegations of bullying, harassment and discrimination will be considered gross misconduct and may result in a dismissal.
- 1.5 Under the Gender Recognition Act 2004, it is a criminal offence for a person to disclose protected information acquired in an official capacity about the gender history of the holder of a Gender Recognition Certificate without the transgender person's consent (refer to section 5.4 for more information).
- 1.6 Managers and employees should also familiarise themselves with the Transsexual, Transgender and Gender Reassignment – Guidance Notes for further information.

2.0 Principles

- 2.1 The policy aims to:
 - Inform good practice in relation to managing transgender equality issues in employment.
 - Support employees who are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purposes of reassigning their gender (transitioning).
 - Ensure that employees feel safe about being open about their gender identity.
 - Ensure confidentiality in relation to an applicant's or an employee's previous gender.

3.0 Scope

- 3.1 This policy and procedure applies to all employees of the Council including the Senior Managers and Managing Director.

- 3.2 It excludes NJC employees and Teachers employed by Governing Bodies who are covered by Schools HR Policies. Policies adopted by the City Council may, following discussion with relevant trades unions, also be recommended as good practice models for adoption by maintained school governing bodies.

4.0 Terminology

- 4.1 Terminology is not fixed, however a glossary is provided at the end of the document to assist understanding of commonly used phrases, based on guidance from EHRC & the Home Office. You may find it useful to read this first if you are not acquainted with the language relating to trans issues. This document refers to 'transgender' as an umbrella phrase to describe all those whose gender identity and/or gender expression is not completely congruent with their birth sex.
- 4.2 However, in relation to gender reassignment as defined by the Equality Act 2010 we reflect the legal use of the term 'transsexual' to define a person who is proposing to undergo, undergoing or has undergone gender reassignment.

5.0 Legislation

5.1 Equality Act 2010

Gender reassignment is a characteristic that provides people with legal protection from direct discrimination, indirect discrimination, harassment, discrimination based on perception (e.g. a person is perceived to have reassigned gender), victimisation and discrimination based on association (e.g. partner, parent, sibling or friend of a transsexual person).

The protected characteristic of gender reassignment applies to a person who is proposing to undergo, is undergoing or has undergone a process to change their gender role and presentation (also referred to as transition). A person is legally covered from the point of 'proposal' – the person can stop the process and not lose legal protection.

This also means that to qualify for protection from direct and indirect discrimination on grounds of gender reassignment a transsexual person no longer has to show that they are under medical supervision.

The decision to live and dress permanently as a person of the opposite sex is determined to be reassigning gender.

Section 16 of the Act protects people undergoing gender reassignment from discrimination due to absence from work. It confirms that absence from work because of gender reassignment should be treated no less favourably than absence because of sickness, injury or any other reason.

This allows employers to treat gender reassignment absence differently from, but no less favourably than, sickness absence and can remove substantial disadvantage that would otherwise be experienced by trans people.

Victimisation occurs when an employee is treated less favourably because he or she has made a complaint under the Act. This does not require a comparator.

The Public Sector Equality Duty (the General Duty) came into force on 05 April 2011. The General Duty requires public bodies to consider the needs of all individuals in their day to day work, in developing policy, in delivering services, and in relation to their own employees.

The General Duty requires the Council to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and those who don't share it (with the exception of marriage and civil partnership).
- Foster good relations between persons who share a relevant protected characteristic and those who don't share it.

5.2 Data Protection Act 1998

Under this legislation, data relating to an individual's gender reassignment (which includes a change of gender status and name) is classed as 'sensitive information', and therefore attracts a higher degree of protection than usual, especially when a Gender Recognition Certificate is held (see Gender Recognition Act below).

5.3 Human Rights Act 1998

Article 8 Right to Privacy of this Act includes the right for information regarding change of gender to remain private and for transgender people and those associated with them to be treated with respect and dignity. Article 3 is an absolute right not to be subjected to degrading treatment.

5.4 Gender Recognition Act 2004

This legislation provided for the Gender Recognition Certificate (GRC), the opportunity for a person who has transitioned to acquire a new 'birth' certificate for their new gender status (for those whose birth was registered in the UK).

It is not possible to hold a GRC until two years 'post transition' and even then valid reasons exist for some transgender people not to apply for legal recognition in their affirmed gender. For example, they may be married or in a civil partnership. If so, the applicant's spouse must consent to the marriage or civil partnership continuing after the issue of a full GRC. If the spouse does not provide consent, an interim GRC may be issued for 6 months, during which time, if consent is still not granted, an application for annulment must be made.

The Act also created a criminal offence of unauthorised disclosure. Essentially, it is an offence for a person to disclose information acquired in an official capacity about the gender history of the holder of a GRC to a third party without the transgender person's consent, as this is 'protected information'.

There are only a few exceptions where it is not an offence to disclose protected information relating to a person, including:

- If the information does not enable the person to be identified.
- If that person has agreed to the disclosure of information.
- If the disclosure is in accordance with an order of a court or tribunal.
- If the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal.
- If the disclosure is for the purpose of preventing or investigating crime.
- If the disclosure is made for the purposes of the social security system or a pension scheme.

6.0 Supporting employees through the gender reassignment process

- 6.1 In order to support and manage successfully a person's gender transition, it is essential that the individual is consulted and involved in discussions regarding how the process should be handled. A formal written understanding should be agreed between the individual and their Manager, or a suitable responsible officer, in the form of an action plan.
- 6.2 Appendix 1 outlines the types of issues that should be considered. This action plan should set out adjustments and arrangements to support the employee during and after the transition and include mechanisms for discussing issues relating to their transition in connection with their role and work environment.

6.3 Appointments and time off work;

Employees undergoing medical and surgical procedures related to gender reassignment may require time off from work.

Any absences relating to operations or treatment will be regarded as sickness absence and the Management of Attendance Procedure will apply as normal.

When the individual is absent for treatment or surgery, sick pay entitlements will apply.

For individual appointments employees should follow the normal policy for medical appointments. As a matter of good practice, managers should offer flexibility to individuals to take annual leave or rearrange working hours in order to attend additional appointments, for example, electrolysis and speech/voice therapy.

Managers should remember that it would constitute unlawful discrimination if they treat an individual undergoing gender reassignment less favourably than someone who is absent for some other medical reason.

7.0 Long Term Sickness

- 7.1 Complications may arise as a result of medical treatment for gender reassignment resulting in prolonged incapacity from work. As with any other long-term illness, the individual will be supported and monitored by the manager with advice from Occupational health and Human Resources. If incapacity continues the absence will be monitored and dealt with in line with the Council's Management of Attendance Policy.

8.0 Use of single sex facilities

- 8.1 Trans people (like everyone else in Britain) can use toilets or changing facilities appropriate to their gender presentation with or without a Gender Recognition Certificate Part of the discussion process with the individual undergoing reassignment will be to agree the point at which the use of facilities such as toilets should change from one sex to the other. This may be the point at which the employee starts to present in the acquired gender at work.
- 8.2 The employee should not be required to use a disabled toilet as an alternative to single-sex facilities, but should be allowed to do so if this is their preference.

9.0 Disclosure

- 9.1 It should be agreed between the individual and their manager, or suitable responsible officer, as to who will take responsibility for informing whoever needs to know. If the individual going through the process would prefer to do this, the manager or responsible officer will need to know when the disclosure is to take place and in what detail, so that they can provide appropriate support.
- 9.2 Managers and others i.e. Human Resources, Occupational Health, who know of the gender reassignment should not inform anyone that the individual is intending to undergo, or is undergoing gender reassignment, without the individual's explicit agreement.
- 9.3 If an individual is in possession of a gender recognition certificate, it is a criminal offence to disclose their gender recognition, without their consent (refer to section 5.4 for more information).
- 9.4 At the point of change of gender role, a transsexual person may choose to take a short time off work and return in their new name and gender role. This is often used as an opportunity to brief others, the detail of which needs to be agreed between the manager or responsible officer and the employee.
- 9.5 The agreed statement should include the agreed date when the person intends to change their gender role. All personnel records must be updated for the transition. The Council will create new records rather than amend old ones, to ensure confidentiality. All data protection principles must be adhered to.

10.0 Recruitment

- 10.1 The Council is committed to the employment, development and promotion of all, regardless of sex, marital status, colour, race, nationality, ethnic/racial/national origins, religious beliefs, disability, age, sexual orientation or gender identity. As such the Council is committed to ensuring potential employees are not discriminated against in the recruitment process.

10.2 A job applicant's gender identity is irrelevant to the recruitment process, except in exceptional circumstances where a genuine occupational requirement applies to a job. This requirement must be made clear in the recruitment material.

10.3 **Interviewing and Selection**

There is no obligation for a transsexual person to disclose their gender history and/or identity as a condition of employment. If they choose to disclose, this is not in itself a reason for not offering employment. Moreover, no-disclosure, or subsequent disclosure, is not grounds for dismissal.

10.4 **References**

When a manager is asked for a reference for a transsexual person, they must provide it, without disclosing that the person has had a change of gender.

If documents are requested in the individual's original name, such as copies of essential qualifications, Human Resources should discuss with the individual concerned how to retain such evidence on file so as not to compromise or breach disclosure of protected information.

11.0 **Records**

11.1 All documentation revealing an individual's previous gender status must be specially protected.

11.2 The Council will ensure that all documents and employment details reflect the acquired gender of the person. This will prevent breach of confidentiality.

11.3 Any records of an individual which may disclose a previous gender history and/or identity must not be contained openly within a personnel file, physical or electronic. Documents retained on an individual's personnel file will be replaced with documents in the new name and gender where possible.

11.4 Some records may need to make reference to birth sex such as pensions, security vetting, qualification certificates and any medical records. However once a person has obtained a GRC these can be replaced.

11.5 **Access to records**

Access to this information must be restricted to only those who require this information to carry out the duties of their role. For example, access to records associated with the individual's transitioning status (such as records of absence for medical treatment) should be restricted to relevant persons such as the employee's manager and Human Resources.

12.0 Roles and Responsibilities

12.1 Employees are required to:

- Participate in discussions with a manager or suitable responsible person to agree how the transition process should be handled and communicated.
- Agree a formal written understanding in the form of an action plan (refer to Appendix 1).
- Follow the stated procedures when requiring time off for medical or other treatment, or if reporting sickness absence, in line with the Management of Attendance Policy and Leave Policy.
- Co-operate fully with the management process and the occupational health services provided by the Council.

12.2 Managers or suitable Responsible Officers are required to:

- Consult with and involve the employee in discussions regarding how the transition process should be handled and communicated.
- Agree a formal written understanding in the form of an action plan (refer to Appendix 1).
- Take responsibility for referring the employee to Occupation Health at an appropriate time, if necessary.

12.3 Service Directors and Heads of Service are required to:

- Ensure that their employees and managers are aware of their individual responsibilities in relation to this policy.

12.4 Human Resources are required to:

- Provide support and guidance to managers to ensure consistent understanding and implementation of this policy.
- Ensure the communication, maintenance, regular review and updating of this policy.
- Monitor and review the HR effectiveness of this policy.

12.5 Occupational Health's role is to:

- Give impartial medical advice to both managers and employees.
- Provide managers and employees with support on any health related issues that impact on the workplace.
- Be the referral point for providing and / or gaining clinical viewpoints.
- Assist the organisation in supporting its employees whilst continuing to meet its business objectives.

12.6 The Head of HR

In consultation with the recognised Trade Unions, the Head of HR will exercise delegated authority for and be responsible for the ongoing review and updating of this policy to ensure compliance with changes in statutory requirements and operational delivery, including responsibility for identifying the appropriate

process for the regular evaluation of the effectiveness of this policy. Any fundamental changes to this Policy will be brought before the Resources Panel for approval.

13.0 Related Documents

Data Protection Policy
Data Protection Act
Disciplinary Policy
Bullying and Harassment (Dignity at Work) Policy
Employee Code of Conduct
Equality in Employment Statement
Grievance Procedure
Leave Policy
Management of Attendance Policy and Procedure
Management of Attendance – Managers Guidance
Transsexual, Transgender and Gender Reassignment – Guidance notes

APPENDIX 1

Example of Action Plan to support employee

This action plan outlines the types of issues that should be considered when supporting an employee who is transitioning gender.

Does the employee feel comfortable continuing in their current role? Are there any temporary or permanent changes to the role which could be considered to support the employee? For example, could redeployment be accommodated on a temporary or permanent basis?
What is the expected timescale of the medical and surgical procedures, if known?
Is any time off required for medical treatment? If so how will this be managed?
What will the employee's new title and name be?
When do they wish to start using this name and title? Will there be any phasing?
When do they wish to start dressing and presenting as their acquired gender? Again will this be phased? (This may not necessarily be the same date as above).
When do they wish to start working as their acquired gender? Consider in particular single sex working requirements.
Who needs to be informed of the transition?
When and how should colleagues be informed of the transition? Who will perform this task? Is there any education material which could be used?

Are there any dress codes which need to be considered? (Do new uniforms need to be ordered?)
When does the employee wish to use toilet and changing facilities appropriate to their acquired gender? Please note - accessible (disabled) toilets should not be suggested as an alternative.
When, how and which HR / Payroll / IT Records and or systems will need amending?
If any bullying, harassment or hostile reaction occurs how will it be dealt with?
Other Actions Agreed
Is any further support required?

Date of next meeting: _____

Signature _____
(Manager)

Date _____

Signature _____
(Employee)

Date _____

APPENDIX 2

Glossary

Cross-dresser

Most people who are cross dressers do not experience any discomfort with their gender identity and do not wish to transition their gender role. Nor do they usually seek modification of their bodies. The term 'transvestite' is associated with cross dressing, though some cross dressers would not identify as such and the term is not commonly used.

Under the Equality Act 2010, legal protection is given to someone who is cross-dressing as part of the process of reassigning their gender (transitioning) or to someone who is perceived to be transgender due to being cross-dressed.

Gender

Gender consists of two related aspects; the person's internal perception of who they are is the 'gender identity'; the way the person behaves and lives in society and interacts with others is the gender role or expression. Most people in the general population are cisgender, in other words their perception of themselves is congruent with their sex appearance and their gender role.

Gender reassignment

Under the Equality Act 2010, a person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. This is a personal process that may involve medical interventions such as counselling, psychotherapy, hormone therapy or surgery, but does not have to. In this guidance, gender reassignment is used to describe the process of change and gender transition to describe the time when the gender role is changed.

Gender Dysphoria (GD) / Gender Variance / Gender nonconforming

Dressing or behaving in a way that is perceived by others as being outside cultural gender norms may be described as gender variance or gender nonconformity. Gender dysphoria describes the persistent personal discomfort that occurs when the physical sex does not match the gender identity. The social role is also expected to conform to the sex appearance, so this too feels uncomfortable for the individual concerned. (The term 'gender identity disorder' is considered pathologising and is gradually disappearing from the vocabulary). It should be noted that these refer to all cases whether or not surgery is actively sought.

Gender Recognition Certificate (GRC)

The Gender Recognition Act 2004 provided for the legal recognition of the trans person in their 'acquired', i.e. affirmed, gender and the opportunity to acquire a new 'birth' certificate for their new gender. This is called a Gender Recognition Certificate and replaces the original birth certificate in all official documentation. Those in existing

marriages or civil partnerships are currently obliged to annul them – an Interim GRC is issued for 6 months during which time the annulment application must be made.

Gender Reassignment Surgery (GRS)

An individual must live continuously in the gender role that is congruent with the gender identity for 12 months before undergoing genital surgery. Separate opinions from two clinicians are required for referral for genital reassignment surgery. Some other procedures, such as chest surgery, may be undertaken before this stage, according to the needs of the individual undergoing reassignment.

Surgery is not obligatory to reassign gender and, for some, the risks will be outweighed by the potential benefits.

Affirmed Gender

This refers to the post-transition gender role of a person who has undergone gender reassignment. Those who have transitioned to the affirmed gender role, and who have a GRC, have 'acquired' a new gender status. It is possible for an individual to transition fully to the affirmed gender without surgical intervention.

Hormone treatment

Typically, hormone medication has a very positive effect on a transgender person's wellbeing. Currently, within several NHS Gender Identity Clinics, hormone treatment is not prescribed until the psychiatrists are confident about the person's condition of gender dysphoria. The time taken to complete this assessment process can range between three months and five years after the second consultation. However, it is no longer contingent upon a change of gender role. Some hormone treatment medication can have serious consequences for the person's health and must be regularly monitored by a GP. Once hormone treatment starts, any physical changes may take a while. However, these changes may be painful and uncomfortable. Any changes in this treatment may also have an impact. Depression and other emotional difficulties may manifest during this initial treatment phase. Problems may also occur should medication be withheld at any time or for any reason. Regular blood tests are undertaken and appointments with an endocrinologist may be required.

Physical sex

This is simply the sex with which the body organs, particularly genitalia, were associated with and registered at birth. In most of the population the sex appearance is clearly male or female. However 'intersex' conditions occur in about 1% of the population, some of which give rise to ambiguous genitalia and therefore may be wrongly described on the birth certificate. This may cause a mismatch between the individual's gender identity and gender role, therefore later adjustment, in the same way as for trans people, may be necessary. (The term Disorders of Sex Development has recently been introduced but is unpopular with the population affected).

Sexuality

One of the most common misconceptions about gender dysphoric people is that this is the same as being gay, lesbian or bisexual. Sexual orientation is separate and unrelated to gender dysphoria. The sexual orientation of gender dysphoric people may be heterosexual, gay, lesbian, bisexual or asexual.

Transsexual

An adjective that describes people whose sex, as registered at birth, is not congruent with their gender identity. Usually people respond to their discomfort by undergoing a personal process of gender reassignment to bring their outside characteristics and their gender expression, in line with their gender identity. The word transsexual is not often used by people who may be so described, because they prefer the terms 'trans' or 'transgender'. Those that have completed the process may regard themselves as man or woman, having resolved the conflict between their gender identity and gender expression.

This term is also used by the Equality Act 2010 to define people who fall within the definition of those people with the protected characteristic of gender reassignment.

Transgender (often abbreviated to 'trans')

This is often used as an 'umbrella term' to include all people who experience gender dysphoria and express this in some way. Transgender includes transsexual people but it is much wider to embrace a wide variety of gender expression, including those who have no intention of permanently changing gender role and may use a variety of self-descriptions, such as poly-gender, pan gender, gender queer. A few do not identify as either men or women and are non-gender.

Trans Man

A trans man is a person who was registered female at birth, but who identifies as a man.

Trans Woman

A trans woman is a person who was registered male at birth, but who identifies as a woman.

Source: Based on guidance from EHRC and the Home Office/a:gender the workplace and gender guide