

Together
we make a
difference

GENDER REASSIGNMENT POLICY

JULY 2022

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1. INTRODUCTION

- 1.1 Wyre Council is committed to promoting equality and fairness in all employment practices. We will provide a diverse and inclusive working environment where people feel that they can be themselves, are valued for their individual differences and are treated with dignity and respect. This includes how individuals wish to identify and express their gender.
- 1.2 For the majority of people their innate sense of being male or female i.e. their gender identity matches their birth sex and they do not have any questions over their gender identity. However, there are a small number of people whose gender identity does not match the gender they were assigned at birth, these are transgender people. Some will undergo the process of aligning their life and physical identity to match their gender identity, and this is called transitioning.
- 1.3 Ignorance of the issues that surround transsexualism has led to negative stereotyping, ridicule, discrimination and persecution of the transgender community. Many encounter alienation by family and friends, suffer anxiety and depression and fear ridicule and victimisation from work colleagues.

2. PURPOSE

- 2.1 The purpose of the Gender Reassignment Policy is:
 - To ensure employees or members of staff who are contemplating undergoing, are undergoing or have undergone gender reassignment are treated with dignity and respect and are supported in recruitment, employment and personal development.
 - To provide management guidance on the status of transsexual or transgender staff and the issues faced by individuals going through the process of gender reassignment.
 - To detail the appropriate procedure to be followed when a transsexual or transgender person applies for a post with the Council following gender reassignment, or states that they are about to undergo gender reassignment whilst in the employment of the Council.
 - To provide guidance to staff and officers in supporting staff who are contemplating undergoing, are undergoing or have undergone transition.
 - To provide understanding of the need for confidentiality and respect with regard to staff who are contemplating undergoing, are undergoing or have undergone transition.

3. SCOPE

- 3.1 This policy is primarily written in relation to those effecting or having completed a permanent change of gender, however all transgender people are entitled to the same dignity and respect afforded to others in the workplace.

4. DEFINITIONS FOR THE PURPOSE OF THIS POLICY

- 4.1 Gender identity – this is how a person perceives their gender. Typically, this is the birth gender or the gender that is associated with their physical appearance, however, those who are undergoing gender reassignment may associate with a gender that does not match their physical appearance.

Gender reassignment – this is the process in which individuals change gender. This may be from a female to a male, or from a male to a female. To be included within the protected characteristic of gender reassignment, the individual does not need to undergo any medical treatment or intervention.

Gender dysphoria – this is a recognised medical condition where an individual feels distress and discomfort as their gender identity is inconsistent with their physical appearance. This used to be known as “gender identity disorder”.

Transsexual – this is the specific term used within the Equality Act to define individuals who fall within the protected characteristic of gender reassignment.

Transgender/trans – these are umbrella terms commonly used to describe all individuals whose gender identity falls outside of their physical appearance. These terms will cover individuals such as those who adopt the physical appearance of the opposite gender on an intermittent basis and non-binary identities, as well as those who are transsexual. These terms are commonly seen as more inclusive than the term transsexual.

Non-binary – this describes individuals whose sense of gender identity does not identify with male or female. Many non-binary individuals will refrain from using pronouns such as “he” or “she”.

Gender expression – this is the way in which an individual chooses to express their gender. Common examples include clothing, jewellery, hairstyle, voice, names and pronouns.

Affirmed gender - this is the term for an individual’s gender once gender reassignment has taken place.

5. THE LEGAL POSITION

- 5.1 It is not intended to go in to great detail to explain the whole Legislative Framework, suffice to say that the key areas of legislation are set out below.

5.2 The Equality Act 2010:

The Act defines nine “protected characteristics” which are age, disability, marriage and civil partnership, pregnancy and maternity, race and ethnicity, religion or belief, sex, sexual orientation and gender reassignment.

Provisions within this Act cover:

Discrimination on the grounds of gender reassignment in relation to pay, treatment in employment and vocational training.

Individual disability discrimination rights must be considered where the individual has been diagnosed as suffering from gender dysphoria or gender identity disorder and the condition has lasted 12 months, is likely to last 12 months or will remain with the individual for the rest of their life.

5.3 The legislation makes clear that it is not necessary for people to have any medical diagnosis or treatment to gain gender reassignment protection; it is a personal process of moving from one’s birth gender to the preferred gender.

5.4 The Equality Duty under this Act places a statutory duty on public authorities to pay due regard to the elimination of discrimination and harassment of transsexual staff.

Employers can be held responsible for the actions of their staff even if it is without the employers’ knowledge or approval. Employees are also individually responsible for their own discriminatory actions.

5.5 The Gender Recognition Act (GRA) 2004: gives legal recognition to transsexual/transgender people in their acquired gender. They must satisfy the Gender Recognition Panel that they:

- Have or have had gender dysphoria
- Have lived in the acquired gender for a period of two years prior to the application
- Intend to live permanently in the acquired gender
- Are not married

The gender recognition process ensures that they receive a full Gender Recognition Certificate (GRC) and new birth certificate reflecting their acquired gender.

They are also afforded all the rights and responsibilities appropriate to that gender. It should be noted that under section 22 of the Gender Recognition Act if such an individual is in possession of a GRC, it is a criminal offence to disclose their transgender status without their consent. It is also inappropriate to ask someone to produce a GRC and they are not obliged to produce it.

5.6 **Section 8 Asylum and Immigration Act 1996:** Since May 2004 a potential employer must see an applicant's proof of identity and right to work in the UK. This includes a UK/EEC passport or a full birth certificate and a P45, P60, National Insurance card or a letter from a Government agency.

Some transsexual people may not have any identification documents in their acquired gender, for example birth certificate. A birth certificate is not sufficient proof of identity for the purpose of this Act, it may therefore be more appropriate for them to produce a passport. Employers must ensure that any information which discloses an employee as trans, must be kept confidential.

5.7 **Data Protection:** Under Data Protection legislation transsexual identity and gender reassignment would constitute 'sensitive data' for the purposes of the legislation and must be processed as such.

5.8 There is normally no requirement for a transgender and transsexual person to tell their employer about their gender reassignment status or answer questions about a possible transgender status. However, it would be unusual for someone to reach the point of a social transition while in employment without advising the Council.

6. ROLES AND RESPONSIBILITIES

6.1 It is the responsibility of Managers to:

- Support members of staff who are contemplating undergoing, are undergoing or have undergone gender reassignment.
- Respect the individual's right to privacy and to ensure that all sensitive information remains totally confidential.
- Resolve any genuine concerns that employees may have
- Ensure colleagues have training around equality and diversity and gender reassignment.

6.2 It is the responsibility of the Human Resource Team to:

- Ensure compliance with the policy and its supporting legislation.
- Provide advice, support and guidance to all parties on the application of the policy.
- Arrange confidential support and counselling for those who are suffering emotionally.

7. ACTION ON INITIAL REQUEST FOR SUPPORT

7.1 The person first approached may not necessarily be in the best position to advise on the way forward but whoever is approached must first reassure the employee that the Council will be as supportive as possible.

7.2 That individual should request the permission of the staff member to contact the Human Resources Manager who will help identify a main point of contact to discuss the process for handling the transition. This nominated person could be a line manager or a member of Human Resources , but it may be necessary to approach other officers as the transition progresses.

7.3 **Agreeing a process**

Transition is the process of moving from one gender to another, and involves social, psychological, and emotional changes. The time scale for the transition will depend on how the employee wishes to proceed and the nominated officer will help plan for this.

The nominated officer and employee should therefore agree an initial plan that will support the employee and facilitate the change process. It is expected that initial discussions will be needed in relation to:

1. Who needs to know and at what point;

- Will the employee inform their line manager, colleagues and clients themselves, or would he or she prefer this to be done for them?

2. When the employee would like to start attending work in their desired gender;

- how and when to inform colleagues
- changing name and pronouns socially
- changing the way he or she will dress

3. If and when they intend to start hormone therapy and/or undergo surgery;

- what time will be needed for medical appointments or procedures, and/or possible side-effects of any medication
- sick pay entitlements and time off for medical appointments etc. will be in accordance with corporate policies.

4. Is redeployment / relocation appropriate;

- during the earlier part of the medical process, the staff member may wish to be redeployed temporarily or this could be a recommendation from Occupational Health that we may consider.

7.4 **Official Records**

A transgender employee has the right to be addressed by the name and pronoun corresponding to the employee's gender identity. Certain types of records, like those relating to payroll and pension benefits may require a legal name change before changes can be made. Most records, however, can be changed to reflect a person's preferred name without proof of a legal name change.

8. SECURITY OF RESTRICTED INFORMATION

8.1 Recruitment

Applicants do not have to disclose their transsexual/ transgender status during recruitment or as a condition of employment. If they choose to do so, this must not be used as a reason for not offering employment and non-disclosure or subsequent disclosure are not grounds for dismissal.

8.2 The recruitment selection panel, will not be informed of any disclosure made by an applicant either personally or on their application or pre-employment medical questionnaire. Should the applicant be successful any disclosure would remain strictly confidential unless a relevant Genuine Occupational Qualifications (GOQ) applies. GOQ for a specific gender are rarely required and advice should be sought from the Human Resources Manager in such cases.

8.3 The respective forms used for security checks and medical screening will seek information that will lead to identification of transsexual status. This information will remain 'confidential' and the disclosure of this information will be restricted to those personnel closely involved in the two procedures who will be required to honour that confidentiality. Any subsequent paperwork that indicates the individual's transsexual status will not be accessible to other staff.

8.4 Protected Information

Section 22 of the Gender Recognition Act 2004 establishes a right to privacy for the transsexual person in that it is an offence for a person to disclose information he or she has acquired in an official capacity about a person's application for a gender recognition certificate or about the gender history of a successful applicant – this is 'protected information.'

Access to any records showing the change of name and other details associated with the individual's transsexual status such as records of absence for medical treatment should be restricted to HR staff who require such information to perform their specific duties.

Any deliberate or inappropriate release of confidential information leading to a transsexual staff member or recruit being identified against their wishes, whether internally or externally, could be treated as a matter of gross misconduct.

8.5 Gender Recognition Certificate

When a trans person receives a gender recognition certificate, they have the right to request that all references to their former name and gender are removed from old records to ensure their former identity is not revealed. All records held on paper file must be found and replaced with new records. i.e. any certificates should be replaced with new ones, their original offer letter will need to be replaced with an offer letter in their new name. Nothing should remain on the file that would disclose to a third person that a change has occurred.

- 8.6 The Human Resources Manager will be responsible for the safe keeping of all records and documentation relating to the transition and he or she will destroy all such documents as soon as the person has successfully transitioned into their new gender role.

9. CORPORATE INSURANCE

- 9.1 With regard to the Council's general insurance (group motor and personal accident policies) there is currently no necessity to disclose whether or not an individual has undergone gender reassignment as such individuals would be treated in the same way as anyone else. However there are insurers who would automatically invalidate a policy if the medical aspects of gender reassignment is not disclosed. Once we are aware that an employee has reassigned gender, any insurance implications would be discussed in full with the employee. No disclosure would be made without the written agreement of the employee concerned.

If we as an employer remain unaware, then the obligation to disclose falls upon the employee, who could also be held liable in the event of an incident for which no valid insurance cover existed.

10. VICTIMISATION, DISCRIMINATION, BULLYING OR HARASSMENT

- 10.1 Wyre Council is committed to creating a safe work environment for all employees. Any incident of discrimination, harassment, victimisation or bullying because of gender identity will be dealt with in accordance with the Council's Dignity at Work Policy and /or the Council's Disciplinary Policy and if proven could lead to the dismissal of the perpetrator.

11. COUNSELLING

- 11.1 This procedure can be distressing for all parties, if anyone feels unable to discuss any problems with their direct line manager the Human Resources Team and Occupational Health are available to help. Alternatively confidential advice is available from the Employee Support Programme.

12. EQUALITY IMPACT ASSESSMENT AND MONITORING

- 12.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

13. DATA PROTECTION

- 13.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.