



Report of:	Meeting	Date	Item No.
Human Resources	Employment and Appeals Committee	14 March 2016	4

Policy Review

1. Purpose of report

1.1 To present to the Panel additions and amendments to Human Resource Policies.

2. Outcomes

2.1 The amendment to existing policies and procedures.

3. Recommendation

3.1 That the Panel approve the policies and arrangements set out in Section 5.

4. Background

4.1 From time to time the Council needs to develop new policies and working arrangements to ensure we comply with statutory requirements and effectively manage our human resources.

4.2 The development of new policies and the review of existing policies will also be informed by employment best practice and the organisational needs of the Council.

5. Key Issues and Proposals

5.1	Working Carers Policy	Appendix 1	Reviewed
	Fostering Policy	Appendix 2	Reviewed
	Social Media Policy	Appendix 3	Reviewed
	Gender Reassignment Policy	Appendix 4	Reviewed
	Preventing Illegal Working Policy	Appendix 5	Reviewed

5.2 Working Carers Policy has a few minor amendments/additions.

- 5.3** Fostering Policy also has a few minor amendments/additions including amendments to show that all staff now have the statutory right to request flexible working.
- 5.4** Social Media Policy - has been amended to ensure that staff are aware that social media cannot be used for investigatory purposes without appropriate authority. In addition as all communication on work equipment is monitored, staff should have no expectation of privacy if using for private usage.
- 5.5** Gender Reassignment Policy has been partly rewritten for readability.
- 5.6** Preventing Illegal Working Policy has been partly rewritten and updated to reflect current guidance from the Home Office.

Financial and legal implications	
Finance	There are no specific Finance issues associated to this report.
Legal	There are no specific Legal issues associated to this report. However failure to comply with appropriate legislation may expose the Council to litigation.

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

report author	telephone no.	email	date
Head of Business Support	(01253) 887316	Liesl.hadgraft@wyre.gov.uk	3/03/2016

List of Background Papers:		
name of document	date	where available for inspection
None		

List of appendices

- Appendix 1 Working Carers Policy
- Appendix 2 Fostering Policy
- Appendix 3 Social Media Policy
- Appendix 4 Gender Reassignment Policy
- Appendix 5 Preventing Illegal Working Policy

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WORKING CARERS POLICY

March 2016

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1. Background

- 1.1 Current figures suggest that as many as one in eight adults in the United Kingdom (approximately six million people in total) are carers and half of these individuals try to juggle their caring commitments with paid employment. With on-going advances in medical technology and treatment, people are living longer and it is anticipated that the number of carers could rise to nine million by the year 2037.
- 1.2 At Wyre Council we recognise that some employees have caring responsibilities for seriously ill, elderly or disabled relatives, partners and family members. We also recognise that other employees may have these responsibilities in the future.
- 1.3 As an employer, we have a duty of care for the health, safety and wellbeing of our employees, therefore a legal and moral responsibility to support employees who are carers.
- 1.4 Further, we are committed to offering carers the same recruitment and retention opportunities as everyone else, regardless of their responsibilities outside work. The Equality Act 2010 protects job applicants and employees against direct discrimination and harassment if they are associated with someone who has a protected characteristic, for example a disability.
- 1.5 In addition to the legal and moral responsibilities we have, research has shown that it makes business sense to care for and support carers in their employment. Other employers have found that offering carers flexible ways of working and leave arrangements, to accommodate their needs, can bring huge benefits to an organisation, resulting in:
 - Lower staff turnover
 - Reduced recruitment and training costs
 - Greater productivity
 - Lower absenteeism
 - Higher staff morale
 - Higher levels of trust in working relationships
 - Improved image of the organisation

We appreciate the demands that caring responsibilities have on our employees and we are aware that, at times, it may be difficult to combine paid work with caring responsibilities outside of work. It is accepted that these caring demands place an additional strain upon an employee, which can in some cases impact on their performance at work as well as their health. It is for this reason that we recognise the importance of supporting carers and aim to assist them successfully manage the balance between caring and work responsibilities, wherever possible.

2. Purpose

- 2.1 The aim of this policy is to ensure that we are able to recruit and retain the service of valued employees who have caring responsibilities outside of the workplace. The policy is a guide for both employees and managers as to how to approach and deal with requests for leave and flexibility to assist with caring commitments. It is intended to cover all possible situations and circumstances that an employee with caring responsibilities could face.
- 2.2 It is important to note that although the decision to agree requests for leave and flexibility in

relation to working arrangements ultimately lies with line managers, they are encouraged and expected to sympathetically consider employees' requests for support in these circumstances, where business or service needs allow.

3. Scope of the Policy

- 3.1 The Work and Families Act 2006 and the Employment Rights Act 1996 gave working carers statutory rights to help them manage work and caring responsibilities, including the right to request flexible working arrangements and leave.
- 3.2 This policy pulls together the existing provisions that Wyre Council operates for employees needing time away from work with the flexible working provisions. This Working Carers Policy should therefore be read in conjunction with these statutory provisions, Council policies and approved practices/procedures.

4. Policy Statement

- 4.1
 - Employees are actively encouraged to inform their line manager if they are caring for someone.
 - Managers are actively encouraged to meet with their employees who have caring responsibilities to discuss the support they need.
 - Managers are encouraged to consider requests from employees with caring responsibilities (for leave or flexibility in their working arrangements) favourably, wherever possible, where business or service needs allow.
 - Issues raised and discussed between employees and their manager are dealt with in a confidential manner.
 - Employees with caring responsibilities are treated fairly and consistently, whilst taking into account the individual needs and circumstances of each case.
 - Employees are not discriminated against, harassed, victimised or disadvantaged because of their caring responsibilities.

Note: This policy is separate to and therefore not designed to cover issues relating to employees with childcare responsibilities (as separate parental leave arrangements exist in relation to childcare) unless the child in question has a disability or serious long term health condition.

5. Definition of a Carer

- 5.1 For the purpose of this policy, a "working carer" is defined as "a Council employee who spends a significant proportion of their life providing unpaid support to family in addition to their working role. This could be caring for a relative or partner who is ill, frail, disabled or has mental health or substance misuse problems."

6. Carer's Responsibilities

- 6.1 Staff are under no obligation to tell their line manager that they are a carer but we would encourage them to do so, wherever possible. By speaking with their line manager, and explaining

their caring commitments to him/her, they are able to discuss how these impact on their ability to balance work with caring responsibilities. Staff are also encouraged to seek advice and information from the sources of support available to them (for example, from their line manager, HR, the Carers Centres, Occupational Health or the Employee Support Programme).

- 6.2 We would also encourage staff to inform their work colleagues of their caring responsibilities, if they feel able to do this. Work colleagues can often be very supportive and understanding of the commitments people have outside of work and may find that colleagues are carers themselves, therefore aware of the difficulties that are faced in managing work and caring responsibilities.

7. Manager's responsibilities

- 7.1 To actively encourage employees with caring responsibilities to meet with them and to openly and honestly discuss the difficulties they are experiencing balancing their work and caring commitments. Managers, have a duty of care for the health, safety and wellbeing of their employees.
- 7.2 To consider requests from employees with caring responsibilities for leave or flexibility in their working arrangements favourably, wherever possible, where business or service needs allow, to enable these valued members of staff time to attend to their caring commitments.

8. Support Options

- 8.1 Employees are encouraged to discuss their individual circumstances with their line manager and bring options/suggestions to the meeting as to what leave or flexible working arrangements would assist with their caring commitments, having also considered the impact their request could have on the delivery of the service.
- 8.2 The options open and available to employees include the following leave and flexible working provisions, but this list is not exhaustive. Managers have the discretion to agree to specific/individual requests, which take account of the circumstances their employee is experiencing, if they feel this course of action is reasonable and it is something they are able to accommodate. The following options should therefore be considered alongside more short term, informal, options such as working from home, mobile working or allowing employees to make up the time they owe over an agreed period of time.
- 8.3 **Support Options – Leave**

The following provisions are available to support employees who require leave to attend to their caring commitments. The leave most appropriate to the situation, which takes account of the individual circumstances, should be discussed with and agreed between the employee and their line manager:

- Annual Leave
- Special Leave – Time off for Dependants or Emergencies (Unpaid)
- Special Leave (Unpaid)
- Extended Authorised Absence (Unpaid)

Further details on the above provisions and how to request them can be found within the Leave and Work life Balance Policy which can be accessed via the Council website.

8.4 **Support Options - Flexible Working Arrangements**

It is important that flexibility is available to all employees and in particular to carers who have to balance work with caring responsibilities. Offering flexibility often means that carers are able to continue working effectively and add value to the organisation whilst at the same time cope with the pressures they face outside of work.

Often the arrangements that have to be made are relatively straightforward and can easily be put into place by the line manager.

Most caring emergencies for which specific arrangements have to be made will be relatively short term, and it is therefore important to emphasise the need for an on-going flexible approach between employees and managers.

In addition to considering formal flexible working options, employees and line managers are also encouraged to consider informal, short term, alterations to working practices to help employees cope with a caring emergency or unforeseen situation.

The following formal flexible working provisions are available to support employees who require flexibility in their working arrangements on a more long term basis to attend to their caring commitments. It is important to note that a number of the flexible working arrangements are subject to qualifying criteria. This does not, however, prevent a manager from agreeing to or proposing a variation in working arrangements for an employee who does not meet the qualifying criteria if agreeing to this request will assist the employee with their caring commitments and does not adversely impact on business or service needs:

- Flexible Working Hours
- Working from home
- Annualised Hours
- Compressed Hours
- Term Time Working
- Voluntary Reduced Working Time (V Time)
- Extended Authorised Absence
- Job Share
- Part time Working

Further information on the above options and details of how to submit a flexible working request can be found within the Flexible Working and Work life Balance Policy which can be accessed via the Council website.

9. Additional Sources of Support

- 9.1 If further help and assistance is needed, the following sources of support are available to both employees and line managers:

- HR Section
- Occupational Health
- Employee Support Programme
- Carers Centres
- Carers Direct

10. Equality Impact Assessment and Monitoring

- 10.1 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.

15. Data Protection Act 1998

- 15.1 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 the requirements of the Data Protection Act 1998.

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Fostering Policy

March 2016

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1. Introduction

- 1.1 Fostering is an activity where even though a looked after child or young person is placed with a fostering family, the legal responsibility remains with the local authority and/or the child's birth parents. Fostering can last as long as months or years - or as short as just a few days. Sometimes the child will end up returning to their birth families; sometimes they will get adopted into a new family. Fostering is not the same as adoption; placements are considered a temporary solution that will help in the journey towards a permanent solution. There are many reasons why fostering is put into place and children are brought into care, including illness, a family breakdown, instances where the child's welfare is in jeopardy and relationship problems. While the benefits to the looked after child or young person are numerous, there are also benefits to the fostering family and the wider community where children live in a loving and supportive environment.
- 1.2 Wyre Council is committed to supporting employees to become foster parents and employees in their role as a foster parent. This policy sets out the Council's support for employees who are undertaking the care of a child or children under a foster-care arrangement with a local authority.
- 1.3 It is recognised that, in such cases, employees have specific obligations towards the child/children in accordance with their arrangement with the local authority and that, in some cases; the child/children may require a high level of care. This policy is intended to form part of the Council's overall family-friendly approach, and it attempts to strike a balance between the business needs of the Council and the needs of the employee to meet his/her care obligations.

2. Notification requirements

- 2.1 To ensure that the line manager and colleagues can provide employees with the necessary support and encouragement, employees who are intending to foster a child/children are asked to give their line manager at least four weeks' notice of their intention to train as a foster carer. This is to ensure that, should they wish to request any special arrangements to care for the child/children, their line manager has sufficient notice to make any necessary arrangements for staff cover.

3. Time off to care for new foster children

- 3.1 Foster carers may need to take time off work to help the child/children to settle into the new environment. They may also need time off to attend training courses, meetings with professionals or appointments with the child/children. Employees who require time off to attend training or meetings or to care for the child/children at the start of the foster-care arrangement may request special leave to do so. The request must be in writing and the employee must specify the period of time off that he/she requires.
- 3.2 The following provisions are available to support employees who require leave to attend to their fostering commitments. The leave most appropriate to the situation, which takes account of the individual circumstances, should be discussed with and agreed between the employee and their line manager:
 - Annual Leave
 - Special Leave – Time off for Dependents or Emergencies (Unpaid)

- Special Leave (Unpaid)
- Extended Authorised Absence (Unpaid)

4. Time off for dependants

- 4.1 Foster carers (irrespective of length of service, and whether they are part time or full time) are entitled to take a reasonable amount of time off during working hours to take necessary action:
- to provide assistance when a dependant falls ill, gives birth or is injured or assaulted;
 - to make arrangements for the provision of care for an ill or injured dependant;
 - • because of the unexpected disruption or termination of arrangements for the care of a dependant;
 - to deal with an incident that involves their child and occurs unexpectedly while the child is at school/other educational establishment.
- 4.2 It is helpful if the foster carer informs their line manager the reason for their absence and how long he/she expects to be absent as soon as is reasonably practicable. Time off work is envisaged as being no more than one or two days. It is envisaged that this leave is used by an employee to attend to an emergency that arises during working hours. It cannot be used as a means of the employee seeking time off to attend to or care for the foster child/children because of lack of available childcare options.
- 4.3 Time off for carers' dependants is unpaid.

5. Parental leave

- 5.1 All employees who have parental responsibility for children are entitled to take up to 18 weeks' unpaid parental leave for each individual child before that child reaches the age of five. Where the child is in receipt of disability living allowance, the employee may take up to 18 weeks before the child's 18th birthday.
- 5.2 However, the statutory right to parental leave is available only to carers when they have parental responsibility for the children concerned. It is normally the case that foster carers will not have parental responsibility, since this will usually be with the local authority if the child has been placed under an interim or full care order.
- 5.3 Employees who are foster carers and wish to take parental leave may be asked to supply evidence of parental responsibility.
- 5.4 In cases where employees do not have parental responsibility for the child, they will not be entitled to parental leave. Instead, employees may request annual or special leave.

6. Flexible Working

- 6.1 All Staff have a statutory right to request flexible working if they have 26 weeks' continuous service.
- 6.2
- 6.2 Each request will be dealt with individually, taking into account the likely effects that the proposed

changes to working hours or place of work are likely to have on the council, the work of the department in which the employee making the request is employed and the employee's colleagues. Agreeing to one employee's request will not therefore set a precedent or create a right for another employee to be granted a similar change to his/her working pattern.

6.3 Employees who wish to submit a request for flexible working should do so in writing in line with the procedure set out in the Flexible Working and Work Life Balance Policy which can be accessed via the intranet or available from HR.

6.4 The request may be for a permanent or temporary variation of their working arrangement.

7. Equality Impact Assessment and Monitoring

7.1 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.

8. Data Protection Act 1998

8.1 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 the requirements of the Data Protection Act 1998.

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Social Media and Employment Policy

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1. Policy Statement

- 1.1 Wyre Council acknowledges that there is significant potential for using social media and that this can bring great advantages. The responsible, corporate use of social media is therefore encouraged.
- 1.2 This policy provides a structured approach to using social media and will ensure that it is effective, lawful and does not compromise Council information or computer systems/networks.
- 1.3 Users must ensure that they use social media sensibly and responsibly, in line with council policy. They must ensure that their use will not adversely affect the council or its business, not be damaging to the council's reputation and credibility or otherwise violate any council policies.
- 1.4 Personal use of social media during working hours is not permitted.

2 Supporting Policies and Guidance

- 2.1 This Policy should be read in conjunction with the Social Media Guidance available on the Council's intranet or from the Engagement Team.
- 2.1 This policy has links to the following policies:
 - Employee Code of Conduct
 - IT Computer Use Policy
 - Safeguarding Children Policy
 - Safeguarding Adult Policy
 - Dignity at Work Policy
 - Disciplinary Policy
 - Data Protection Policy

3. Definition of Social Media

- 3.1 For the purposes of this policy, social media is a type of interactive online media that allows parties to communicate instantly with each other or to share data in a public forum. This includes online social forums such as Twitter, Facebook and LinkedIn. Social media also covers blogs and video- and image-sharing websites such as YouTube, Flickr and Instagram. This list is not exhaustive.
- 3.2 Employees should be aware that there are many more examples of social media that can be given and this is a constantly changing area. Employees should follow these guidelines in relation to any social media that they use.

4. Use of Social Media at Work

- 4.1 Social media will be made available for corporate / business use only.

If it is established that an employee's role should include the use of social media,

approval should be sought by their Manager using the 'Social Media Access Form' from the IT Systems/Software Manager (see the process set out in the Social Media Guidance)

4.2 Social media access for corporate / business use should be via an account registered to the employee's wyre.gov.uk email address only.

4.3 Responsibilities of Users

The following guidelines will apply to online participation and set out the standards of behaviour expected as a representative of Wyre Council.

1. Be aware of and recognise your responsibilities identified in this policy.
2. Remember that you are personally responsible for the content you publish on any form of social media.
3. Never give out personal details such as home address and telephone numbers. Ensure that you handle any personal or sensitive information in line with Data Protection.
4. Be aware of safeguarding issues, as social media sites are often misused by offenders. Safeguarding is everyone's business – if you have concerns about other site users, you have a responsibility to report these to your manager or the Designated Child Protection Officer.
5. Respect copyright, fair-use and financial disclosure laws.
6. Social media sites are in the public domain and it is important that you are confident about the nature of the information you publish. Permission must be sought if you wish to publish or report on meetings or discussions that are meant to be private or internal to Wyre Council. Don't cite or reference colleagues, customers, partners or suppliers without their approval.
7. Don't use insulting, offensive or discriminatory language or engage in any conduct that would not be acceptable in the workplace. Show consideration for others' privacy and for topics that may be considered objectionable or inflammatory.
8. Don't download any software, shareware or freeware from any social media site, unless this has been approved and authorised by the Information Technology Team.
9. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views of proposals in such a way that that identifies them with any individual members or groups of members.
10. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the name, wards and parties of candidates at elections.

4.4 Investigatory Use

The Surveillance Commissioners have provided guidance that certain activities will require authorisation under RIPA or RIP(S)A and this includes repetitive viewing of what are deemed to be “open source” sites for the purpose of intelligence gathering and data collation.

Whilst it is recognised that social media can be used for investigatory purposes, such as identifying fraud, illegal events etc. under no circumstances should employees use social media for investigatory purposes without authority from the relevant Corporate Director.

Officers who have the authority to carry out investigations using social media must comply with relevant guidance and legislation.

5. Monitoring use of social media during work time

- 5.1 Social Media access is monitored in line with the guidelines set out in the IT Computer Use Policy and staff should have no expectation of privacy when using council equipment for private usage.

6. Social media in your personal life

- 6.1 The council recognises that many employees make use of social media in a personal capacity. While they are not acting on behalf of the council, employees must be aware that they can damage the council if they are recognised as being one of our employees.
- 6.2 Employees are allowed to say that they work for the council, and it is recognised that sometimes staff may want to discuss their work on social media. However, an employee's online profile (for example, the name of a blog or a Twitter name) must not contain the council's name.
- 6.3 If employees do discuss their work on social media, they must include on their profile a statement along the following lines: "The views I express here are mine alone and do not necessarily reflect the views of my employer." This does not however exempt you from the points as set out in 6.4.
- 6.4 Any communications that employees make in a personal capacity through social media must not:
- bring the council into disrepute, for example by:
 - criticising or arguing with customers, colleagues or rivals;
 - making defamatory comments about individuals or other organisations or groups;
 - using foul or abusive language; or
 - posting images that are inappropriate or links to inappropriate content;
 - breach confidentiality, for example by:
 - revealing information owned by the council;
 - giving away confidential information about an individual (such as a

- colleague or customer contact) or organisation (such as supplier or partner organisations); or
 - o discussing the council 's internal workings (such as its future plans that have not been communicated to the public);
- breach copyright, for example by:
 - o using someone else's images or written content without permission;
 - o posting anything that is copyrighted, including maps; or
 - o failing to give acknowledgement where permission has been given to reproduce something; and
- do anything that could be considered discriminatory , or bullying or harassment of, any individual for example by:
 - o making offensive or derogatory comments relating to sex, gender reassignment, race (including nationality), disability, sexual orientation, religion or belief or age;
 - o using social media to bully another individual (such as an employee of the council);
 - o posting images or links to content that are discriminatory or offensive.

7. Use of social media in the recruitment process

7.1 Unless it is in relation to finding candidates (for example, if an employee has put his/her details on social media websites for the purpose of attracting prospective employers), the HR department and managers will conduct searches, either themselves or through a third party, on social media only when it is directly relevant to the applicant's skills or claims that he/she has made in the recruitment process. For instance, a prospective employee might claim that:

- they have used social media in their previous job (for example, as a publicity tool); or
- their social media use is directly relevant to a claim made in an application (for example, if they run a blog based around a hobby mentioned in a CV or a skill that they claim to be proficient in).

7.2 There will be no systematic or routine checking of prospective employees' online social media activities, as conducting these searches during the selection process might lead to a presumption that the applicant's protected characteristics (for example, sexual orientation or religious or political beliefs) played a part in the recruitment decision.

8. Disciplinary action over social media use

8.1 All employees are required to adhere to this and associated policies. Employees should note that any breaches of this policy may lead to disciplinary action. Serious breaches of this policy, for example incidents of bullying of colleagues or social media activity causing serious damage to the organisation, may constitute gross misconduct and lead to summary dismissal.

9. Equality Impact Assessment and Monitoring

- 9.1 The operation of this policy will be monitored for its impact on different equality 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.

10. Data Protection Act 1998

- 10.1 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 the requirements of the Data Protection Act 1998.

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Gender Reassignment Policy

Updated March 2016

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1. Introduction

- 1.1 Wyre Council is committed to promoting equality and fairness in all employment practices. It 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 any individuals whose gender presentation is atypical.
- 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 **Transsexualism** also known as **gender dysphoria** is a consistent and overwhelming desire to live and be accepted as a member of the sex opposite to that allocated at birth.

Many experience such intense and prolonged discomfort that they undergo a process of changing their gender. The process consists of changing their name, and personal documentation, and, usually involves undergoing significant medical treatment in the form of hormones and sometimes various surgical procedures.

Transsexual is a term used in the Equality Act 2010 to describe a person who intends to undergo, is undergoing or has undergone a permanent change of gender i.e. **'transitioning'** or **'gender reassignment'**.

- 4.2 **Gender reassignment** describes the process whereby a person changes their gender. This is a personal process, not a medical process which means that someone does not need to have undergone surgery or be under any kind of medical supervision to be classed and protected as transgender.
- 4.3 **Transgender** (often abbreviated to "trans"): This is often used as an "umbrella term" that includes those who temporarily change their gender and appearance, as well as transsexual people. Transsexualism is not the same as, and should not be confused with, transvestism, cross-dressing or sexual orientation.
- 4.4 **It must be noted that many trans people do not identify as transsexual and prefer the words trans or transgender.**

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 as follows:

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.

- 5.2 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.

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.

5.4 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 Act 1988:** Under this Act transsexual identity and gender reassignment would constitute 'sensitive data' for the purposes of the legislation and must be processed as such.

5.7 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.

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 who ever 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 Head of Business Support 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 Human Resources Advisor, 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 display characteristics of both genders and his or her physical appearance will begin to change, relocation may need to be considered if for instance they have face to face contact with the public.

5. Use of facilities;

- transgender employees should use the facilities, of their acquired gender and part of the discussion process will be to agree the point at which the use of facilities e.g. toilets and changing rooms should change from one sex to the other and how colleagues should be informed of this change.
- it is not acceptable, in the long term, to expect a transsexual employee to use separate facilities, such as a disabled person's toilet. However, this may be a practical and acceptable short-term option whilst the individual is going through the earlier stages of reassignment provided this is what they wish.

6. Amendments to records and systems

- the steps that need to be taken to amend records and systems.

7. Potential areas of conflict

- these should be identified and dealt with before they arise and nothing should be done without the consent / knowledge of the individual.

8. Training provision for co-workers.

- this may include awareness training

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 Head of Business Support 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 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 Head of Business Support 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 you feel unable to discuss your problems with your direct line manager the Human Resources Team and Occupational Health are there to help. Alternatively confidential advice is available from the Employee Support Programme - 0800 882 4102.

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 Act 1998

- 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 the requirements of the Data Protection Act 1998.

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Preventing Illegal Working Policy and Procedure

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1. Introduction

- 1.1 The Council has a statutory duty to prevent illegal working by carrying out prescribed document checks on all potential and current employees in order to confirm that they have the right to work in the UK.

All checks should be carried out before the employment commences. If it is found that an employee has a time limit on their stay in the UK then these checks must be repeated at least once every 12 months to ensure that there is a continuing right to work here. Additionally if there's a restriction on the type of work they can do and, or, the amount of hours they can work, then we must not employ them in breach of these restrictions.

Failure to carry out such checks could result in a fine of up to £20,000 for each employee found to be working illegally. Furthermore the penalty for knowingly employing someone illegally is up to 2 years in prison plus an unlimited fine.

- 1.2 The Home Office have produced a comprehensive guide for employers and provided that the Council follows this and can demonstrate that all the required document checks are carried out then it will have a legal excuse (known as a statutory excuse) against payment of a civil penalty if it was found to be employing an illegal worker.

2. Who is entitled to work in the UK

- 2.1 There are work restrictions on nationals from certain countries, these could be a restriction on the type of work they can do and, or the amount of hours they can work.

Swiss Nationals and nationals from the following European Economic Area (EEA) can work in the UK without restriction:

Austria	Greece	Netherlands
Belgium	Hungary	Norway
Bulgaria	Iceland	Poland
Cyprus	Ireland	Portugal
Czech Republic	Italy	Romania
Denmark	Latvia	Slovakia
Estonia	Liechtenstein	Slovenia
Finland	Lithuania	Spain
France	Luxembourg	Sweden
Germany	Malta	

- 2.2 Their immediate family members are also able to work freely in the UK while their adult EEA family members are legally residing and working here.
- 2.3 The Council will always ask for, check and take copies of acceptable documents to confirm immigration status of **all** prospective employees.
- 2.4 **Asylum seekers**

Asylum seekers do not normally have the right to work here and may only be lawfully employed if the Home Office lift restrictions on them taking employment.

2.5 **Students**

Not all international students (those from outside the EEA) are entitled to work while they are in the UK, but some are allowed to take limited employment providing the conditions of their permission to study permit this.

2.6 Where a student does have a limited right to work, the working hours that they may undertake depend on when they applied for permission to come to or stay in the UK, the type of course they are studying and the type of educational provider with whom they are studying.

2.7 **Applications for employment from persons other than those allowed to work in the UK without restrictions (see paragraph 2.1) will only be considered following consultation with the Home Office.**

3. Checking that a person is entitled to work in the UK

3.1 **What documents are acceptable?**

The documents that are acceptable for proving someone has the right to work in the UK are split into two lists. These lists are called List A and List B. (See Appendix 1)

Any of the documents, or specified combinations of documents, described in List A show that the holder has an **on-going** right to work in the UK.

Any of the documents, or specified combinations of documents, described in List B show that the holder has a right to work in the UK for a **limited period of time**. If the checks are made correctly, these checks must be checked at least every 12 months if the Council is to be protected from prosecution and penalties.

3.2 **Step 1 – Documents to be produced**

All prospective employees (or existing employees, if you are carrying out repeat checks) must be asked to provide one of the single documents, or specified combinations of documents from **List A** or **List B** (see Appendix 1).

Only original documents are to be accepted.

If a new or existing employee is only able to provide documents from List B, these documents must be checked again at least once every twelve months.

3.3 **Step 2 – Examination of documents**

The Council is required to take all reasonable steps to ensure the validity of the documents produced and that they correspond in every way to the person to be employed. This should be done by:

- checking that photographs are consistent with the appearance of the person; and
- checking that dates of birth listed are consistent across documents and that you are satisfied that these match up with the appearance of the person; and
- checking that the expiry dates of any limited leave to enter or remain in the UK

have not passed; and

- checking any UK government endorsements (Biometric Residence Permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; and
- satisfying yourself that the documents are genuine, have not been tampered with and belong to the holder; and
- asking for a further document in explanation if you are given two documents which have different names. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.

These documents should also specify that the prospective employee (or an existing employee undertaking a re-check) is allowed to undertake the post.

3.4 **Step 3 – Record of documents**

All relevant pages of the document should be photocopied or scanned. Copies of passport or other travel documents must include:

- the document's front cover and any page containing the holder's personal details particularly those providing details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details; and
- any page containing UK Government endorsements indicating that the holder has an entitlement to be in the UK and is entitled to undertake the work in question.

Other documents should be copied in their entirety.

- 3.5 A record should then be kept of every document that has been copied. The officer who has checked and copied the document should sign and date the copy to confirm that they have checked the original document.

All copies of the documents should be kept securely in the employee's HR file for the duration of the employment and for a further two years after the employment has ceased. This will enable the Home Office to determine the Council's liability if they detect anyone who is employed illegally.

3.6 **Required documentation not produced prior to recruitment**

The Council will refuse to employ any person who fails to produce evidence of their entitlement to work in the UK.

3.7 **Carrying out repeat checks**

If the potential employee provides a document or documents, from List A, this will establish an "excuse" for the duration of their employment.

If the employee presents a document from List B, this is likely to indicate that they only have limited leave to be in the UK. To comply with the regulations and avoid penalty, follow-up checks must be made by repeating steps 1 to 3 **at least once every 6 months** until the individual provides documents indicating that they can remain permanently in the UK.

Document Type	Excuse Type	Frequency of Checks
List A	Continuous	Before employment starts only.
List B - Group 1	Time-limited	Before employment starts and again when permission (as set out in the document checked) expires.
List B – Group 2	Time-limited	Before employment starts and again after six months (as set out in the Positive Verification Notice).

- 3.8 If the required documentation is not produced, or it is found that the employee is no longer allowed to work or carry out the work in question in the UK the Council must terminate the contract of employment on expiry of the document confirming the right to work.

This action will only be taken in consultation with Human Resources.

4. Transfer of Undertakings (Protection of Employment)

- 4.1 Employees who are acquired as a result of a Transfer of Undertakings (Protection of Employment) transfer will be required to provide the documents as outlined above. The Council will have 60 days from the date of transfer to check and copy the relevant documentation.

5. Avoiding Discrimination

- 5.1 It is important that the Council adopt procedures which protect us from prosecution, but equally important to ensure that these procedures do not fall foul of the Race Discrimination Laws. The Human Resource team will ensure that there are no discriminatory practices and all potential employees will be treated in the same way and be required to provide documentation as outlined in this procedure before they start work.

This will ensure that we have complied with the changes and have a valid defence against payment of a civil penalty if it is found that an employee is not legally allowed to work in the UK.

6. Equality Impact Assessment and Monitoring

- 6.1 The operation of this policy will be monitored for its impact on different equality 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.

7. Data Protection Act 1998

- 7.1 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 the requirements of the Data Protection Act 1998.

Documents that show an ongoing right to work

All prospective employees (or existing employees, if you are carrying out repeat checks) must be asked to provide one of the single documents, or specified combinations of documents from **List A** or **List B**

However documents included on list B show a right to work for up to 12 months only. Follow up checks will therefore be required at least once every 12 months to ensure legal employment.

List A

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. A **current** passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
7. An **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
8. A **full** birth or adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

10. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

List B

Group 1 – Documents where a time-limited statutory excuse lasts until the expiry date of leave

1. A **current** passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question.
2. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.
3. A current Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
4. A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

Group 2 – Documents where a time-limited statutory excuse lasts for 6 months.

1. A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is **less than 6 months** old **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
2. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
3. A **Positive Verification Notice** issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.