



TRAFFORD COUNCIL

SUPPORTING TRANS* EMPLOYEES POLICY

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TRAFFORD COUNCIL – SUPPORTING TRANS* EMPLOYEES POLICY

1. Introduction

- 1.1 Trafford Council recognises that understanding and valuing diversity is critical to ensuring success, achieving organisational objectives and improving public trust and confidence. The Council is committed to recruiting, retaining and developing employees from as wide a range of backgrounds as possible with a view to helping them to meet their full potential and to be treated as individuals with their contributions valued. This includes recognising and supporting a person's self-identity, whatever that might be.
- 1.2 The general aim of the guidance is to ensure that we have appropriate support in place for trans* employees. Also that no current or prospective members of staff are subject to discrimination or victimisation because they are a trans* person.

2. Scope

- 2.1 This guidance covers all employees employed by the Council with the exception of Teaching and Non Teaching Staff employed at Schools.

The specific aims of the guidance are to:

- Ensure that employees transitioning gender are treated with fairness and support.
 - Provide management guidance on the status of employees transitioning gender.
 - Detail the appropriate procedure to be followed when someone applies to the Council following gender realignment.
 - Detail the appropriate procedure when an employee states that they are planning to transition.
 - Explain what support is available to employees transitioning or who have transitioned.
- Raise awareness amongst employees of trans* issues.

3. Terminology

3.1 What does trans* mean?

The term 'trans' is usually used to mean 'transgender' which is an inclusive term describing all those whose gender expression falls outside typical gender norms. It is often the preferred term for those who change their role permanently, as well as others who may do for periods but not on a permanent enduring basis. The addition of the asterisk* is to signify the inclusion of any kind of trans and non-binary (not identifying with male or female) gender presentation. So 'trans*' is an umbrella term that refers to all of the identities within the gender identity spectrum.

3.2 Gender identity

Gender identity is a person's perception and experience of gender and gender role and the way in which a person lives in a community and interacts with others, based on their gender identity. There is a presumption that this sense of identity will be consistent with the sex appearance. However some people experience a gender identity that is somewhat, or completely inconsistent with their sex appearance, or they may regard themselves as gender neutral or non-gender.

3.3 Gender dysphoria

Where conforming to society's cultural expectations of gender causes a persistent personal discomfort, this may be described as gender dysphoria. When individuals seek to overcome this discomfort by living in the role that is congruent with their gender identity, ongoing stress may be experienced because of adverse reactions of others. Also dysphoria, in many trans people, includes some level of disgust with their sex characteristics, since they contradict the inner sense of gender identity.

3.4 Gender realignment process (gender transition)

Gender realignment or gender transition is the process a transgender individual undergoes to move from living in their gender assigned at birth to living in their affirmed gender (the gender they identify with). The process usually involves some form of counselling both before and after its commencement. The extent of the process can vary considerably from individual to individual; some individuals may simply dress and live in their preferred gender without any other intervention, whereas others may be prescribed hormones to alter their body and physical characteristics and may undergo a range of medical procedures.

The time it takes from first discussing the issues with a GP to complete transition can take several years and the amount of time will depend on the type of change. The first step is normally a referral by the GP to a Gender Identity Clinic (GIC) and then approximately 6 months before hormones are considered. The final stage for some individuals is to undergo gender reassignment surgery, which may be undertaken approximately one to two years after the commencement of hormone therapy and the real life test (this is the process where transgender individuals live in their affirmed gender for a period of time).

4. Legislation protecting transsexuals

- 4.1 The main pieces of relevant legislation are the Equality Act 2010 and the Gender Recognition Act 2004. The Equality Act 2010 protects individuals from discrimination based on 9 different protected characteristics including gender reassignment.

- 4.2 The Gender Recognition Act 2004 gives legal recognition to people with gender dysphoria in their acquired gender. If they want this recognition they must satisfy the Gender Recognition Panel that they:
- Are over 18;
 - Have had been diagnosed with gender dysphoria; and
 - Have lived in their acquired gender for at least two years; and
 - Intend to live in their acquired gender for the rest of their life.
- 4.3 If successful, the individual will be issued with a Gender Recognition Certificate. This certificate ensures that they are afforded all the rights and responsibilities appropriate to a person of their acquired gender. They will be able to get a new birth certificate, and marriage or civil partnership (where required).
- 4.4 Many trans* people choose not to get a Gender Recognition Certificate and because it is completely optional and isn't required by employers, employees should never be asked to show a Gender Recognition Certificate.
- 4.5 If someone has transitioned from one gender to the other and it is unknown whether or not they have a Gender Recognition Certificate, it should always be assumed that a Gender Recognition Certificate is held.
- 4.6 Alternatively, individuals can get their consultant to write a letter detailing their transition, which can be used to change name and gender details on their passport. However this can't be used to change their birth certificate.

5. Responsibilities

5.1 Managers

- Ensuring trans* individuals are treated with fairness and support.
- Managing the transition process where an employee is changing their gender role in the workplace.
- Taking responsibility for informing colleagues/clients/customers about the transition or supporting individuals who would prefer to disclose the information themselves.
- Supporting and monitoring sickness absence; dealing with requests for time off relating to gender realignment by applying the Council's Attendance Management Policy.
- Monitoring how the employee is being treated by colleagues.
- Recognising when support is required by colleagues, who might find themselves in a new situation beyond their experience.
- It may be useful to undertake research on trans* issues if they have limited knowledge of the area.

5.2 Human Resources

- Providing support and advice during gender realignment.
- Advising on time off for gender realignment treatments.
- When an employee transitions, ensuring personal data and relevant documents are amended as appropriate to ensure confidentiality and to prevent disclosure.

5.3 Employees

- Treating colleagues with dignity and respect, in accordance with the Equality and Diversity Employment Policy.
- Attempting to understand the needs of and support required by trans* employees.

5.4 Occupational Health

- Providing support and advice during gender realignment.

6. **Recruitment**

6.1 The Council seeks to attract, recruit and retain people of the highest calibre by ensuring that we have fairness and equality in its employment practices and processes. It is committed to ensuring potential employees are not discriminated against in the recruitment process.

6.2 Selection and interviewing

Many trans* people have experienced prejudice and harassment as a result of disclosing their trans* identity and therefore may not wish to disclose this when seeking employment. There is no legal requirement for a transgender individual to disclose that they have transitioned from one gender to the other except in very specific circumstances where there are Genuine Occupational Qualifications (“GOQs”) linked to particular roles. The GOQs do not apply where the individual has obtained a Gender Recognition Certificate. An individual should not be asked what their gender is at interview or whether they are transgender.

6.3 Documentation

Any forms and documents provided during the interview and resulting procedures are confidential and will not be accessed by anyone outside the Human Resources/Occupational Health Department unless there is a reason that they need to access it.

Sometimes it may be necessary for a transgender individual to disclose a previous identity so that references from past employers can be obtained. This information is classed as “a special category of personal data” under the General Data Protection Regulations and must be treated in accordance with the regulations.

6.4 Disclosure and Barring Service checks

If disclosure from the Disclosure and Barring (“DBS”) is required as part of the recruitment process, applicants must disclose any previous names and/or gender directly to the DBS. Transsexual applicants may make use of the special application procedure established by the DBS so that their previous name is not disclosed to the Council.

7. Gender Realignment (Transition) procedure

7.1 Agreeing how to manage the process

When an employee plans to transition gender, there should be a discussion with them about who the main point of contact should be to support them with the transition. This is most likely to be the individual’s manager but may depend upon the personalities involved and their knowledge and experience of gender realignment.

In order to support and manage a person’s transition, the employee and their manager or contact person, should put together an action plan so that both are clear on the best way to deal with the different aspects of it. The key to this is that no assumptions are made and decisions are made after discussion with the individual. Nothing should be done without the consent and knowledge of the employee.

As far as possible, any potential issues should be identified and resolved by considered, sensitive and well-documented discussions before they arise.

HR can provide support, however the employee should give the manager explicit consent for them to approach HR to discuss them by name.

7.2 The Action Plan

The action plan is an agreed document that sets out how the transition will be managed. It will include advice and support from the following where applicable: Human Resources; Occupational Health; the unions, and; any other agreed source. Matters to be detailed in the action plan may include the following.

7.2.1 Change in social gender

This is when the employee changes their name and starts presenting at work in their affirmed gender. Whilst this usually takes place shortly before or during hormone therapy, it may occur years before the final surgical procedure (if that is the individual’s intention).

In relation to change in social gender, the following issues should be discussed.

Informing colleagues, clients and customers

It is good practice for the manager, with the individual's explicit agreement, to take responsibility for informing whoever needs to be made aware of the change. However, if the employee wishes to do this themselves, the manager should be told when they will tell people and in what detail, so that they can agree and provide appropriate support.

The timing of this communication should be agreed, and will often be linked to the date that the individual will first go into work in their affirmed gender.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender realignment and is actually a criminal offence to disclose their gender history without their consent (if they have a Gender Recognition Certificate). The individual can tell people this if they feel that they wish to.

Information that should be given to colleagues

Information should be provided on two levels and the content discussed with the individual.

- General information about trans* issues.
- Specific information to enable employees to understand the needs of their colleague. At the point of change of gender role, it is common for the person transitioning to take a short time off work before returning in their new gender role and using a new name. This period is often used by managers to brief others.

Managers must be aware of any concerns that staff have regarding the transition process and attempt to resolve any issues quickly.

Treating colleagues with fairness and respect

All employees must refer to the individual by their new name and use the right personal pronouns (e.g. 'he', 'she') for their affirmed gender. However it is accepted that initially after the individual has transitioned, colleagues may make mistakes and accidentally use their "old" name or an incorrect personal pronoun, which is normally due to habit which can take some time to change. However it is unacceptable to deliberately use the wrong name or personal pronoun.

All employees are entitled to equal support and protection from the Council to ensure they are not the victims of harassment and bullying (see Dignity at Work Policy). Inappropriate treatment of staff who are dealing with trans* issues or who have relatives who are dealing with such issues is unacceptable. Any incidents of misconduct, harassment, bullying or victimisation should be dealt with quickly and in accordance with the appropriate policy.

Use of facilities

Part of the discussion with the individual will involve agreeing the point at which they will switch from using male to female or female to male facilities, such as changing rooms and toilets.

Individual circumstances will have to be taken into account when agreeing a suitable point. This could be the point when the individual changes their social gender. From the agreed date, the individual will use the appropriate facilities and it would not be acceptable to expect them to use separate facilities, such as a disabled toilet. However, during the earlier stages of realignment it may be appropriate to designate a specific toilet for their use and the individual may prefer to use a disabled toilet. There will be different personal preferences on this.

7.2.2 The employee's job

Where this is a viable option and in exceptional circumstances only, consideration should be given as to whether the employee wishes to stay in the same job and location or whether they would prefer to move post and/or location. In the rare cases where a Genuine Occupational Qualification applies to the post, a change of job may be required.

7.2.3 Time off

This will range from time off for appointments which may require a part or full day, to prolonged periods of time off to recover from surgery. Appointments with the Gender Identity Clinic are compulsory and if appointments are missed the individual can be discharged and have to be re-referred by the GP, so staff should be released wherever possible for these.

Counselling & Medication

The initial stage of realignment, which takes the form of counselling and medication, may take several months or years. Where there is choice in the timing of appointments they should be arranged to fit with work commitments. However in some cases there may be little choice in the timing of appointments and wherever possible employees should be released, particularly for GIC appointments, which are normally given with a reasonable period of advance notice. Taking hormones can cause changes in mood and it can take a few months for moods to level out as the individual adjusts so some flexibility and additional support may be required during this period.

Surgery

There are a range of surgical procedures that may be undertaken. There is typically a period of one or more years following counselling and medication before an individual is accepted for surgery. As far as possible, managers should discuss how much time the employee would need to take off work.

This will vary from 2 weeks to around 16 weeks, depending upon the nature of the surgery.

After a return to work after recovery from surgery, there may be after-care required which may mean some flexibility in the individual's working pattern is required.

Sickness Absence

Employees undergoing medical and surgical procedures will normally require time off work and the amount will vary. The Council will show the same flexibility as it would for someone undergoing any other serious operation or medical treatment, as outlined in the Council's Attendance Management Policy, which provides for a maximum of three months full sick pay and three months half sick pay. Flexible working patterns and requests for unpaid leave could also be considered.

Complications may arise following medical treatment or surgery, resulting in prolonged incapacity for work. As with any other long-term illness, the individual will be supported and monitored by their manager, guided by the advice of Occupational Health and Human Resources

Other Treatments

There are other appointments that staff may need as part of the transition and some may be ongoing years after the main transition. These include electrolysis and voice training.

7.2.4 Dress codes

If a dress code applies to the employee's job, consideration must be given as to what, if any, flexibility should be applied to accommodate the transition.

7.2.5 Record keeping

As noted already it is a criminal offence to disclose the fact that a person with a Gender Recognition Certificate has changed gender, without their permission. When a person transitions, their manager or contact person should liaise with one appropriate named person in the Greater Manchester Shared Service (GMSS) to ensure the process of dealing with employment records is managed in line with data protection principles.

Updating Records

All personnel records must be updated at the time of the transition. New records should be created rather than amending old ones, to ensure confidentiality. In some cases records may need to be retained, however they should be sealed for use in specified exceptional cases. All General Data Protection Regulation principles and rights must be adhered to.

Replacing Documents

Where copies of documents (such as birth certificate, exam certificates etc.) have been received by the Council at the commencement of employment, every effort must be made to replace these documents with equivalent documents in the employee's new name and gender. This is dependent upon the employee having got updated versions.

Unless a person holds a Gender Recognition Certificate, they cannot alter their birth certificate. However, they can obtain other documents in their new identity, such as:

- passport
- driving licence
- national insurance number

Public References

All documents, public references (such as telephone directories), intranet contacts and employment details must reflect the affirmed gender of the individual. This will prevent any breaches of confidentiality.

Access and Disclosure

Access to records showing the change of name and any other details associated with the transsexual employee's status (such as records of absences for medical treatment) must be restricted to those who require the information in connection with their work.

The General Data Protection Regulations limit the purposes for which information may be kept and states that where the personal data is no longer necessary in relation to the purpose for which it was originally collected/processed it should be erased.

Applications for Gender Recognition

The Gender Recognition Act states that an individual's application for gender recognition and gender history are "protected information" and it is therefore a criminal offence to disclose this information unless the individual cannot be identified or gives their consent.

Secondary Level Disclosure

Trans* employees may choose voluntarily to disclose information at a secondary level, for example, when asking for support from their line manager. However, once again, strict confidentiality must be observed, as further disclosure must not be made without the express permission of the individual.

References

When an employer is asked for a reference for a trans* employee, they must provide it, without any reference to the fact that the person involved has changed their gender.

8. Review

This policy will be periodically reviewed in order that it remains appropriate to the Council's operation, is best practice and meets legal requirements.