
Transgender Policy

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1. Purpose

1.1 The purpose of this policy is to set out the Council's commitment to ensuring that transgender people are treated with dignity and are not unlawfully discriminated against or disadvantaged in the workplace. This commitment is an important aspect of the Council's commitment to equal opportunities in employment and should be read in conjunction with the Council's [Equality in Employment Policy](#).

1.2 The Chief Executive and Corporate Board have approved the Transgender Policy.

2. Applicability

2.1 This Policy applies to:

2.1.1 All non-school based employees working for the Council, including those working from home or at non-Council locations.

2.1.2 Other persons including Elected Members, Consultants, Agency staff and Contractors working for the Council, external organisations working with the Council, whilst engaged on Council business .

2.2 It is the responsibility of each employee and other person mentioned in Section 2.1 to familiarise themselves with and adhere to this Policy.

2.3 Adherence to this Policy is a condition of working for the council or using its assets.

2.4 This Policy has had consultation with Heads of Service and Trade Unions and has been ratified by the Personnel Committee.

3. Policy

3.1 West Berkshire Council believes diversity and inclusion bring benefits to the organisation and that people work better when they can be themselves.

3.2 The Council opposes all forms of unlawful and unfair and discrimination, and believes that all people have the right to be treated with dignity and respect. It will strive to ensure all employees are able to work in an environment that respects the rights of each individual employee and where colleagues treat each other with dignity and respect.

3.3 The Council is committed to providing a working environment that is free from discrimination, harassment or victimisation because of gender identity.

3.4 This policy is intended to assist the Council to put this commitment into practice and to help the Council, transgender people and other employees to handle any practical issues that may arise.

4. Terminology

4.1 Definitions and terminology regarding transgender people are evolving. Individuals will self identify and how they choose to describe themselves should be respected by their managers and colleagues. Rather than assume it is best to ask someone the way that they wish to be addressed.

4.2 Using inappropriate language and terminology can cause offence and distress and undermines the Council's efforts to create an inclusive workplace for transgender people.

4.3 The Council recognises that gender identity and sexual orientation are not interchangeable terms. Transgender people can be bisexual, gay, heterosexual or lesbian and so employees should not assume that a transgender colleague has a particular sexual orientation

5. The law

The Equality Act 2010

5.1 Gender reassignment is one of the nine protected characteristics covered by the Equality Act 2010. The Act protects a person from discrimination, harassment and victimisation if they are "proposing to undergo, are undergoing, or have undergone a process (or part of a process) of gender reassignment". There is no requirement for the person to be under medical supervision as gender reassignment is considered to be a personal rather than a medical process. Under the Act, a person who takes time off work for gender reassignment must not be treated less favourably in respect of employment decisions, for example by being denied access to training or promotion opportunities.

5.2 The Act also protects anyone who is perceived to have the characteristic of gender reassignment or is associated with someone who has the protected characteristic of gender reassignment, such as an individual's partner or a friend.

5.3 An employee who treats a colleague less favourably because of gender reassignment, for example by refusing to work with or for them, may be held personally legally liable for discrimination.

The Gender Recognition Act 2004

5.4 The Gender Recognition Act 2004 allows transsexual people to apply for a gender recognition certificate (GRC), which will give them legal recognition in their acquired gender and enables them to obtain a new birth certificate. The Act safeguards the privacy of an individual with a GRC by defining information relating to the gender recognition process as "protected information" and, except "in certain specific circumstances" (for example, for the purpose of preventing or investigating crime), it is a criminal offence to disclose such information without the individual's consent.

5.5 An application for a GRC will be made to the Gender Recognition Panel (part of HM Courts and Tribunal Service). Individuals are required to provide a medical diagnosis of gender dysphoria and evidence that they have lived in their acquired gender for two or more years and intend to do so permanently.

5.6 Transgender people are not required to apply for a GRC and many choose not to for various reasons. For example, someone may choose not to apply because they are in an existing civil partnership and would need to dissolve this or convert it to a marriage, as the law prohibits civil partnerships between people of the opposite sex. An individual should never be asked if they have a GRC and to do so could be considered harassment.

More information on applying for a GRC can be found on the GOV.UK website.

6. How the Council supports transgender employees

6.1 The Council recognises that transgender job applicants and employees are not required to inform the organisation of their gender status or gender history. The gender in which an individual chooses to present **should** always be acknowledged and respected.

6.2 To promote a workplace that is inclusive of transgender people, the Council adopts the following approach.

7. Recruitment

7.1 The Council wishes to attract applicants from as wide a talent pool as possible and the recruitment process is designed to be inclusive of transgender applicants. Job advertisements should make clear that opportunities are open to all suitably qualified applicants. If this statement makes explicit reference to not discriminating on particular grounds, those grounds should include gender reassignment. Where an application form is used, this should not include a question about previous names.

7.2 Managers should not ask questions about an applicant's gender identity or gender history. If an individual chooses to mention this during the interview, they should be informed that the organisation supports transgender employees and assured that the disclosure will have no bearing on the outcome of the interview and will not be revealed outside the interview room.

7.3 The requirement to provide proof of identity to confirm the right to work in the UK can be particularly sensitive for a transgender applicant whose identification documentation may be in their previous names. The organisation will always ensure that an applicant is made aware of the full range of permissible identification documents and that the process of checking is handled sensitively and with respect for privacy of the individual.

7.4 Where an individual's documentation reveals their previous name and thereby their gender history, this information will be kept confidential and stored securely with the permission of the individual and in accordance with the requirements of data protection legislation. The same approach will apply where an applicant is required to present qualification certificates before a job offer is confirmed and the certificates are in the applicant's previous name.

8. Employment

8.1 An employee who is transitioning may wish to be redeployed on a temporary or permanent basis. This may be because: the individual is in a public-facing role and wishes to avoid having to answer questions from the public about gender status; or the role involves particular tasks, for example heavy lifting, that will be difficult to undertake if undergoing a particular type of treatment. Requests to be redeployed will be discussed with the employee and, where possible, the Council will seek to accommodate the employee's wishes.

8.2 A manager should not put pressure on an individual to change jobs or make assumptions about their capability or wishes.

8.3 An employee's gender history or status will not have a bearing on any employment decisions or access to benefits, except where permitted by law. For example, an individual who has transitioned but does not have a GRC may be required to disclose their gender history for pension purposes. In such circumstances, the Council will treat such information

as sensitive data and it will be handled in line with the requirements of data protection legislation. In such circumstances, the employee's written consent will be obtained before disclosing their gender history and status.

9. Names and pronouns

9.1 The Council will take all necessary steps to ensure that an individual's change of name is respected. The Council is aware that a failure to change pronouns and names on records in respect of a transgender employee could constitute direct discrimination.

9.2 A GRC is not required to enable a transgender person to change their name and the Council will never ask an individual if they have a GRC to verify a name change, as to ask such a question would be inappropriate and could be considered harassment.

9.3 Consistently addressing a transgender employee by their previous name and/or an inappropriate pronoun may be regarded as harassment and will be dealt with under the Council's [Responding to Bullying and Harassment Policy](#).

10. Employee records, data handling and confidentiality

10.1 Records such as systems that contain names, titles and other personal identifiers such as photographs on the Council's website and intranet should be changed by the time the individual presents at work with their new identity. The Council will work with the employee to agree when this will be done and to ensure that nothing is omitted.

10.2 The disclosure of information by employees/job applicants is voluntary and any information disclosed will be treated in confidence, stored securely and used only to provide statistics for monitoring purposes.

10.3 All records that include details of an employee's gender history will be destroyed in a secure manner, unless there is a specific reason for retaining them. Where other people in the Council need to be aware of the employee's transition to make a change to a particular record, the Council will obtain the employee's consent, and restrict the information to those who need to know.

10.4 Where there is a need to retain documentation that shows someone's gender history, this information will be stored confidentially in line with the requirements of data protection legislation. The information will be held electronically and individuals who have access to it will be made aware that breaches of confidentiality could be unlawful and result in disciplinary action.

10.5 Care will be taken to ensure that any search of the Council's records by others will not inadvertently reveal an employee's gender history.

10.6 It is an individual's decision whether or not to reveal their gender status and history to the people they work with and the Council will respect their right to privacy. For example, if someone is recruited into a team managed by a transgender employee, they must not be informed about the manager's gender history. The right to privacy will apply regardless of whether or not the individual has a GRC.

10.7 Where an employee discloses information about their gender history or status (verbally or in writing), this will be treated as confidential. This includes any information provided to the line manager or HR. Such information will not be shared with others,

unless there is a specific reason and then not without the written consent of the individual concerned. Disclosure of the gender history of someone with a GRC without their specific permission would normally be a criminal offence.

10.8 Information relating to an employee's gender status or history will not be disclosed to a third party without the individual's consent, for example when responding to a reference request.

11. Communication

11.1 The Council will work with the employee to agree what information needs to be conveyed to work colleagues and when the information should be conveyed. While the whole workforce may not need to know about the employee's transition, people who work closely with the individual will normally need to know to ensure that a good working relationship is maintained.

11.2 The employee may wish to tell colleagues about their transition or may prefer if this is done by someone else on their behalf. The Council will encourage the individual to do what is best for them and, if the employee is not ready to tell anyone at the early stages, the Council will respect the employee's wishes. The employee is entitled to privacy and the Council will seek to protect them from intrusive enquiries.

11.3 Where an employee has a public or client-facing role, the Council will discuss with the individual what third parties need to know and how this should be handled.

11.4 The Council will be mindful of possible media interest and establish a protocol for handling media interest to ensure that:

- a transgender employee is not left to deal with this; and
- their colleagues understand the importance of not compromising the individual's right to privacy.

12. Bullying and harassment

12.1 The Council is committed to ensuring a working environment for employees that is free from harassment, intimidation, bullying and victimisation. Behaviour that contravenes this may result in action being taken under the Council's [Disciplinary Procedure](#).

12.2 Examples of harassment against transgender people include:

- verbal abuse such as name-calling, threats, derogatory remarks or belittling comments about transgender people;
- asking an individual if they have a GRC;
- jokes and banter about someone's gender identity or transgender people generally;
- refusing to use the pronoun appropriate to someone's acquired gender (for example, calling a trans woman "he") or calling the person by the name they had before they transitioned;
- threatening behaviour or physical abuse;

- intrusive questioning about someone's gender identity or transition;
- excluding a transgender colleague from conversations or from social events;
- refusing to work with someone because they have transitioned; and
- displaying or circulating transphobic images and literature.

12.3 All employees are made aware of the Council's [responding to bullying and harassment policy](#) and the procedures in place for handling complaints of bullying and harassment.

12.4 Any complaints of bullying and harassment are taken seriously and dealt with promptly.

13. Single sex toilet facilities

13.1 The Council will support a transgender employee's right to use the toilets and facilities appropriate to the gender that they identify with. In some cases, the individual may wish to use a single-occupancy toilet **where available** during their transition, but they must not be pressurised to do so and this should not be seen as a long-term solution. A transgender person should not be expected to use an accessible toilet unless they have a disability.

13.2 The Council will agree with the employee when they wish to start using the facilities appropriate to their acquired gender and how this should be communicated to colleagues. Any concerns raised by others will be dealt with promptly and sensitively and harassment of the individual will not be tolerated.

14. Dress codes

14.1 The Council will agree with the employee what flexibility in the Council's dress code may be permitted to accommodate the process of transition or where a gender-specific mode of dress would be uncomfortable for the individual.

14.2 If a transgender employee is required to wear a uniform, the Council will ensure that arrangements have been made to provide them with a uniform appropriate to their gender. The uniform will be available from the point at which the individual presents in their new gender status.

15. Training on transgender issues

15.1 Information on transgender issues is an integral part of the Council's equality training for its employees. The aim is to help our employees to understand what is and is not acceptable behaviour and to differentiate myth from reality, thereby minimising the potential for conflict arising from misunderstandings.

16. Supporting an employee who is transitioning

16.1 The Council will be supportive of an employee who has made the decision to transition.

16.2 The Council acknowledges that the transition process and the time it takes will be unique to each individual and that it is not always a linear process.

16.3 Transitioning is a major decision and the individual may have taken years to come to this point. They may fear rejection or ridicule by their work colleagues. It is therefore vital that the Council supports the individual so that they can continue to work without fear of discrimination and harassment and that colleagues are helped to understand the process.

16.4 Once the Council has been made aware by an employee that they will be starting, or have started, the process of transitioning, an appropriate point of contact will be agreed with the employee. That person will work with the employee to develop a confidential action plan to manage the individual's transition at work. Guidance on creating an action plan can be found at the end of this document.

16.5 The plan will consider what steps to take before, during and after the employee's transition. No action will be taken without the employee's consent.

16.6 It is important to develop a plan that is bespoke to the individual employee. Some of the key issues to address are likely to include:

- when and how an individual will present at work in their new gender status;
- handling a request by the employee to change their job temporarily during the transition process or to move to a new role permanently;
- the point at which colleagues, especially any direct reports, will be informed and how this will be done;
- if and how third parties, such as clients, should be informed;
- how absence from work for reasons associated with transitioning (for example, for medical appointments and/or medical treatment) will be handled;
- arrangements for changing the individual's name on their personnel records, email, security badges etc;
- confidentiality; and
- dress codes and/or uniforms.

16.7 Transitioning is a process that takes time, and, to help both parties, regular review meetings will be arranged to manage the process. This will ensure that the right support is in place, and enable the plan to be amended as things change. Effective support for someone who is transitioning requires dialogue, agreed action and respect.

17. Roles and Responsibilities

17.1 The overall responsibility for the Transgender Policy within WBC rests with the Chief Executive.

17.2 The responsibility for day-to-day management of the Transgender Policy throughout West Berkshire Council rests with the Head of Human Resources. Human Resources is also responsible for maintaining this Policy, and for providing advice and guidance on their implementation.

17.3 All managers are directly responsible for implementing this Policy and any sub policies and procedures within their service areas, and for the adherence of their staff and others (2.1.2).

17.4 All those detailed at 2.1.1 and 2.1.2 have an individual responsibility to adhere to this Policy and any relevant Standards and/or Procedures.

18. Failure to comply with WBC Transgender Policy

18.1 This document provides staff and others with essential information regarding transgender equality and sets out conditions to be followed. It is the responsibility of all to whom this Policy document applies to adhere to these conditions. Failure to do so may result in:

- withdrawal of access to relevant services
- informal disciplinary processes
- formal disciplinary action (in accordance with the Council's Disciplinary Procedure)

18.2 Additionally if, after internal investigation, a criminal offence is suspected (for example under Gender Recognition Act), the Council may contact the police or other appropriate enforcement authority to investigate whether a criminal offence has been committed.

19. Review

19.1 This policy will be reviewed to respond to any changes and at least every 3 years.

19.2 The Service responsible for reviewing and maintaining this Policy is Human Resources.

Appendix One: Transgender Action Plan

This action plan outlines the key actions/considerations to be taken to ensure that an employee's transition at work goes as smoothly as possible and their presentation at work in their new identity as stress free as possible.

The action plan should be shaped by the employee as much as possible and be sufficiently fluid to take account of changing circumstances and preferences. There should be agreement on the confidentiality of the plan and who will have access to it.

Where other people in the Council will be responsible for taking action identified in the plan, it is crucial that the need for confidentiality and data protection are understood.

The name of who will do what and by when should be recorded for each action.

Further advice can be sought from Human Resources.

Name of the employee's main contact at work during their transition:

Consider who will be the employee's main point of contact during their transition, this may well be their line manager, however, in some circumstances they may prefer it to be someone else.

Issues to be considered:

Does the employee wish to remain in their current role or to be redeployed (where possible) or their duties modified during the period of their transition? (Note: the employee must not be pressurised to change jobs or move from a public facing role).

Communicating the transition:

Discuss and agree the method and content of the communication. Adapt the approach as necessary for:

- Colleagues and/or direct reports
- Other employees, and
- Relevant third parties

Note: deciding on who is told, what they are told and when must be led by the employee, with support of their main contact/manager. The employee should not be pressurised into taking responsibility for informing people.

Consider:

- Who needs to know about the employee's transition and why?
- When should those who need to know be told?
- How should they be told (individually, at a team meeting, by email from the employee?)
- Does the employee want to tell those who need to know, or be present for all or part of the time when they are told?
- What information do they need to be told (e.g. about transitioning, names and pronouns, use of toilets?)

- How can the employee's immediate work colleagues and/or direct reports support the employee?
- How will questions be handled? (e.g. about temporary redeployment, the use of toilets)
- Is there likely to be media interest? If so how will this be handled? The employee should not be expected to deal with any press intrusion.

Changing employee records

It is important that the employee is addressed by their chosen name and the correct pronoun and prefix

Records containing the employee's name, prefix or information that could reveal their previous identity needs to be amended by the time the employee presents in their new identity. Examples of what records to change include:

- Staff pass and id badge
- Email address
- IT document systems
- Personnel records (electronic and paper files)
- Phone directory entry
- Intranet, website, MyView
- Openscape
- Benefits schemes such as the pension scheme, car lease scheme, parking permit
- Voicemail
- Union membership

NOTE: Some historical documents with the employee's previous name and gender may need to be retained – for more information see the section on 'confidentiality below

Confidentiality:

Consider whether there are any records that need to be retained that include or indicate the employee's gender history. Information must be treated as sensitive and kept in accordance with data protection legislation.

Be careful to ensure that historical documents that contain references to the employee's previous name /gender can only be accessed only by a limited number of specified individuals. This could include historical documents relating to the employee's attendance on training courses, maternity or paternity leave, grievances, disciplinaries etc. Contact HR for advice.

Consider the steps that need to be taken to ensure appropriate confidentiality and who will ensure this.

Pensions and benefits:

Ensure that any implications in respect of pensions and benefits are discussed with the employee.

Dress codes:

Where the employee wears a uniform for work consider whether they will need a new one when they transition and ensure it will be available in good time for when they first present at work in their new gender.

Absence:

To avoid potential discrimination, time off for treatment associated with the employee's transition should be excluded from the trigger points for action under the Council's management of sickness absence procedure.

Ensure that absences due to transitioning are not treated less favourably than any other absence.

The amount of time off required will depend upon the nature and extent of the treatment that the employee is undergoing. For example the employee may have hormone therapy for a number of years prior to surgery, need to have a number of operations, may decide not to have surgery or take breaks from their treatment. Treatment should NOT be viewed as cosmetic or elective.

Discuss in advance how much time off might be required for treatment and plan for absences, but allow flexibility as it will depend upon the type of treatment and availability. Remember not all those who transition will have medical intervention.

Ongoing support:

Discuss and agree how often progress meetings should be held, but be prepared to be flexible about this according to the employee's wishes.

Return to work following transition

Does the employee wish to be away for an agreed period (e.g. on annual leave) and present in their new identity on their return?

What date will the employee present for work in their new identity?

Glossary

Terminology around gender identity is complex and constantly evolving. ACAS have produced a useful guide for employers available via this [link](#).

Some key terms are summarised here:

- **Acquired gender:** Used in the Gender Recognition Act 2004 to describe a person's gender after transitioning. As this is a legal term, many people now prefer to use the term "affirmed" gender.
- **Assigned gender:** The gender assigned to someone at birth, based on their physical characteristics.
- **Cross dresser:** Someone who chooses to wear clothes not conventionally associated with their assigned gender. "Cross dresser" is now used in preference to the term "transvestite", which is considered to be outdated and can cause offence. Cross dressers are generally comfortable with their assigned gender and do not intend to transition.
- **Gender dysphoria:** A recognised medical condition where the individual experiences severe discomfort and anxiety because their gender identity does not align with their biological sex.
- **Gender expression:** How someone manifests their gender identity in society, for example through their appearance and behaviour.
- **Gender identity:** A person's internal perception of their gender, their sense of self. For transgender people, their gender identity does not match the gender they were assigned at birth.
- **Gender reassignment (or transitioning):** The process where an individual changes their expressed gender to live fully in the gender with which they identify. For example, a person who was born female decides to take steps to live the rest of their life as a man. Gender reassignment does not require medical treatment and is a protected characteristic under the Equality Act 2010.
- **Intersex:** An intersex person is born with ambiguous genitalia and/or sex chromosomal variations, making it difficult to classify their biological sex. There are many different intersex conditions. An intersex person may self identify as a man or a woman or neither.
- **Non-binary:** An inclusive term to describe people whose gender identity is "fluid" and not exclusively male or female. A non-binary person may identify as neither male nor female or may feel that they embody elements of both genders, or that they are something different. The terms intersex and non-binary are not interchangeable.
- **Transgender (or trans):** An umbrella term describing the diverse range of people whose gender identity or gender expression differs from the gender they were

assigned at birth. The term can encompass individuals who are transsexual, cross dressers or non-binary.

- **Transsexual:** A transsexual person has the protected characteristic of gender reassignment and is defined in the Equality Act 2010 as someone who is "proposing to undergo, is undergoing or has undergone gender reassignment". Gender reassignment is a protected characteristic under the Act. It is not necessary for a transsexual person to have to be under medical supervision to be protected in law from discrimination.
- **Transphobia:** A fear of or a dislike of transgender people. It is based on prejudice and misunderstanding and can involve verbal abuse, physical violence and other forms of harassment

Other Relevant Documentation

[The Equality in Employment Policy](#)

[The Responding to Bullying and Harassment Policy](#)

[The Disciplinary Procedure](#)

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