

## **EAST AYRSHIRE COUNCIL**

**CABINET – 20 NOVEMBER 2019**

**Report by Depute Chief Executive and Chief Financial Officer**

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### **SUBJECT: Supporting Trans Employees in the Workplace- Policy and Guidance**

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#### **PURPOSE OF REPORT**

1. The purpose of this report is to seek approval of the Supporting Trans Employees in the Workplace Policy and Guidance.

#### **RECOMMENDATIONS**

2. **It is recommended that Cabinet:-**
  - (i) **agree the Supporting Trans Employees in the Workplace Policy and Guidance; and**
  - (ii) **otherwise, note the contents of the report.**

#### **BACKGROUND**

2. As the largest employer and provider of public services in East Ayrshire, the Council has a key role to play in eliminating discrimination and promoting equality of opportunity and good relations between different groups, within its own workforce and also within the communities it serves.
3. The attached Policy and Guidance will be for Trans employees, managers, employees and the Human Resources Service. The need for this comes from a recognition that Trans employees are valuable members of staff, yet the workplace can be a daunting environment for some. A hugely beneficial factor for Trans employees is a working environment that feels safe and supportive, and the importance of a good working relationship between the employee and their employer/manager and Human Resources.
4. The Council recognises and values the diverse range of talents, skills, experience and perspectives that exist within society and believes that those qualities and attributes should also be reflected within the composition of its workforce, its employment practices and in the planning and delivery of its services.

#### **SUPPORTING TRANS EMPLOYEES IN THE WORKPLACE**

5. The policy and guidance sets out responsibilities as an employer of Trans people. As gender reassignment is a protected characteristic under the Equality Act 2010,

the Council must ensure that people are not discriminated against or disadvantaged whilst at work or in delivering a service.

6. The policy is a guide for the Human Resources Service, managers, employees and employees who are transitioning. It provides information in relation to legislation, good practice, contains a quick guide for managers, and employees, and contains a glossary of terms in relation to gender/gender reassignment.
7. Consultation was carried out between with Trans Scotland, LGBT Youth Scotland, Heads of Service, Trade Unions and employees to ensure that the policy is fit for purpose and meets the criteria in relation to undertaking an Equality Impact Assessment. The findings of the consultation were collated and the policy updated, where appropriate, to reflect the feedback that was received.

### **LEGAL/RISK IMPLICATIONS**

8. The approval of the Supporting Trans Employees in the Workplace; Policy and Guidance will enable the Council to meet its statutory obligations in respect of the overall Equality Act 2010. It will also enable the Council to meet its statutory obligations as an employer and provider of services.

### **HUMAN RESOURCE IMPLICATIONS**

9. The approval of the Supporting Trans Employees in the Workplace-Policy and Guidance provides information for Human Resources, managers, employees and employees who are transitioning.

### **EQUALITY IMPACT IMPLICATIONS**

10. An Equality Impact Assessment has been undertaken and concluded that the approval of the Supporting Trans Employees in the Workplace-Policy and Guidance, will:
  - assist to eliminate discrimination by promoting diversity within East Ayrshire Council, and will help the Human Resources Service , managers, employees and Elected Members understand the impact of discrimination on employees who reassign their gender;
  - advance equality of opportunity for employees who are transitioning by providing information in relation to support available whilst at work, which will assist in further breaking down barriers, provide a working environment that feels safe and supportive thereby assisting a supported transition in the workplace; and
  - foster good relations by providing information, and breaking down myths of Trans issues for the Human Resources Service, all employees and Elected Members.

### **FINANCIAL IMPLICATIONS**

11. There are no direct financial implications arising from this report.

## COMMUNITY PLANNING/TRANSFORMATION IMPLICATIONS

12. The approval of the Supporting Trans Employees in the Workplace-Policy and Guidance will contribute to developing a broader understanding of the equality agenda and building the capacity of employees to work in a way which promotes equality of opportunity, social justice and social inclusion, a Guiding Principle of the Community Plan.

## CONCLUSIONS

13. The Supporting Trans Employees in the Workplace-Policy and Guidance will support the Council's agenda in relation to promoting equality of opportunity, eliminating discrimination and fostering good relations between different groups, within its own workforce and also within the communities it serves.

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# **Supporting Trans Employees in the Workplace**

## **Policy and Guidance**

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## INTRODUCTION

- 1 As the largest employer and provider of public services in East Ayrshire, the Council has a key role to play in eliminating discrimination and promoting equality of opportunity and good relations between different groups, within its own workforce and also within the communities it serves.
- 2 The Council recognises and values the diverse range of talents, skills, experience and perspectives that exist within society and believes that those qualities and attributes should also be reflected within the composition of its workforce, its employment practices and in the planning and delivery of its services.
- 3 The policy and guidance sets out responsibilities as an employer of Trans people. As gender reassignment is a protected characteristic under the Equality Act 2010, we must ensure that people are not discriminated against or disadvantaged whilst at work or in delivering a service.
- 4 We recognise that every Trans person has a different experience and therefore it is not a case of “one size fits all”. Each person will have different needs and as such, a person-centred approach will be taken.
- 5 This policy sets out the Council’s commitment to provide services that are inclusive and accessible and also the measures it will adopt to eliminate discrimination, promote equality of opportunity and promote good relations between different groups both within and out with the workplace. This policy reaffirms our commitment to support sympathetically and appropriately any employee who is transitioning. We will also seek to provide appropriate support to the line managers and colleagues of such employees, where this is needed.
- 6 Central to the Council’s bullying and harassment policy is the prevention of discrimination, victimisation, bullying and harassment against employees on any grounds, but particularly in relation to the following protected characteristics:  
  
**age; disability; sex; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; and sexual orientation.**
- 7 In addition, prevention of discrimination, victimisation, and bullying and harassment in relation to gender identity, including gender expression, language, social origin, employment status, political belief, trade union membership or activity, or responsibility for dependants is key to this policy.
8. We will take very seriously any accusations of harassment of, or discrimination against any Trans employee and any incident of this nature will be dealt with under the Council’s bullying and harassment policy.
- 9 Trans employees have the right to be accepted by colleagues not as a Trans person, but as just another colleague, workmate, team member, manager, and should be treated equally in the workplace.

- 10 The Council recognises that Trans people are entitled to fair and equal access. A person's Trans status or history will not exclude them from the high standards of employment expected from the Council. The Council recognises and is committed to:
- The broad spectrum of gender diversity within society and that traditional gender stereotypes are inadequate in reflecting the lives of employees and service users.
  - The right of people to live with dignity and privacy in the gender with which they identify, and that there must be no exceptions to this when a Trans person is an employee or using Council services and facilities.
  - Any employee who is transitioning in our workplace. Any changes to working conditions or access to facilities should have an agreed approach between the employee and their manager that takes account of the legal duties incumbent upon the Council.
  - Ensuring equality of opportunity for Trans employees and service users.
  - Ensuring Trans employees and service users are treated in their self-identified gender at all times.
  - Providing management and employees with guidance on the rights of Trans employees and service users to ensure legislative compliance.
  - Develop our Trans awareness training to reflect best practice.
- 11 The Council will ensure that Trans employees are treated as being of the gender in which they are living irrespective of whether they have undergone any hormonal or surgical treatment or have a Gender Recognition Certificate. For example, a Trans person who requests that colleagues start using different pronouns for example 'she, he, or they' to reflect their gender identity is protected by the Equality Act 2010. They must be treated in accordance with their self-declared gender identity.
- 12 It is unacceptable for colleagues and managers to refuse to recognise, for any period of time, an employee as belonging to the gender in which they are currently living. Discrimination from other employees and/or service users will **not** be tolerated. In the case of employees being discriminatory, the manager should use the relevant policies/procedures to deal with the situation. As a public body we have a duty under the Equality Act 2010 to foster good relations between individuals who have protected characteristics and those who do not.
- 13 This policy and guidance has been produced to help employees and managers understand how the relevant law applies and how to deal with issues that may arise when an employee is proposing to undergo, is undertaking or has undergone process (or part of a process) for the purpose of reassigning the person's sex and is Trans.

## **LEGAL CONTEXT**

- 14 The foundation of delivering services that are non-discriminatory must be in compliance with the law. As a starting point on the journey to delivering fully inclusive and accessible services, Council employees must be familiar with their legal responsibilities in relation to working with Trans colleagues and service users.

### **Equality Act 2010**

- 15 The Equality Act 2010 provides for protection in relation to employment and service provision in relation to gender reassignment. The law makes it clear that discrimination, victimisation and bullying or harassment is unlawful.
- 16 A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- 17 It is important to recognise that this means someone has the protected characteristics of gender reassignment if they simply propose to undergo a process for the purpose of reassigning their sex. Gender reassignment is a personal process (rather than a medical process) that involves moving away from his or her sex assigned at birth to their preferred gender to change the gender of name and pronouns they use, even if they do not wish to change any aspect of their physical body.
- 18 People are also protected if they face discrimination due to being associated with a Trans person (for example, if they are a friend or family member) and due to being incorrectly perceived to be Trans when they are not actually a Trans person.

### **GENDER REASSIGNMENT**

- 19 The protected characteristic of gender reassignment as detailed in the Equality Act 2010 currently has a specific meaning;
- It covers someone who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
  - Gender reassignment does not have to involve any medical procedure or supervision. For example, a person who chooses to reassign their gender solely through social and administrative changes such as changing their name and identity documents, without having any hormonal or surgical interventions, is protected. Further, gender re-assignment would cover a Trans person.

### **TRANS**

- 20 Trans is an umbrella term for people who, for whatever reason, feel their gender identity or gender expression differs from their sex assigned at birth. The Council understands the term Trans and its legal protections to include anyone proposing to undergo, undergoing or having undergone any part of a process



for the purpose of gender reassignment. This may include Trans men, Trans women, or non-binary people.

- 21 Non-binary people do not identify solely as male or female. They identify as having no gender, or experience their gender as fluid and changeable. Where this is the case, discussions relating to provision of services and equality in employment may require more consideration, as there is no explicit recognition of non-binary people in the Equality Act 2010. However, non-binary people are included in our commitment to ensure people do not experience discrimination, bullying or harassment due to gender identity including gender expression.

#### **GENDER RECOGNITION ACT 2004**

- 22 The Gender Recognition Act 2004 sets out the process for individuals aged at least 18 years to apply for a Gender Recognition Certificate (GRC) after living full-time in their acquired gender for at least 2 years having or had gender dysphoria, and intends to continue to live in the acquired gender until death. It is not necessary for someone to have undergone genital surgery or any other medical intervention other than a diagnosis of gender dysphoria to receive a full GRC.
- 23 Once a full GRC is issued to a person, their legal sex/gender henceforth becomes for all purposes their acquired gender, including for marriage and civil partnership purposes and for employment in posts where a Genuine Occupational Qualification to be a particular sex/gender applies. People with a GRC can apply for a corrected birth certificate if their birth was registered in the UK. A person who has received a GRC is not required to show their GRC to others such as employers or service providers. It is not an identity document and will not be carried on the person.
- 24 It is very important to note that employers and service providers must change on first request by an individual, their name and gendered title (for example, Mr, Miss, Ms) on all their employment, medical and other records, identity badges and future correspondence. All that the individual needs to state in their request is that they are starting a process of gender reassignment to live permanently in their affirmed gender. They do not need to show a GRC in order to change over their day-to-day documentation or to use the toilet facilities of their affirmed gender.
- 25 **Section 22 of the Gender Recognition Act 2004** makes it a criminal offence, with a **fine of up to £5,000 on conviction**, for any person to disclose information which they have acquired in an official capacity about an individual's application for a GRC, or about the gender history of a successful applicant.
- 26 If a person has a GRC or it could be assumed they might have a GRC (for example they are living permanently in their affirmed gender), then this cannot normally be disclosed further in a way which identifies the person involved without that person's express consent or, more exceptionally, a specific order by a court or tribunal.

- 27 **Section 22(4)** of the **Gender Recognition Act 2004** states specific exempt circumstances where it is not an offence to disclose protected information about a person's application for a GRC, or about that person's gender history. The exempt situations of relevance to the Council are where:
- The information does not enable that person to be identified.
  - That person has agreed to the disclosure of the information.
  - The disclosure is in accordance with an order of a court or tribunal.
  - The disclosure is for the purposes of preventing or investigating crime.
- 28 The **Gender Recognition (Disclosure of Information) (Scotland) Order 2005** provides limited exceptions permitting disclosure of the protected information about someone's gender recognition history. The exceptions of relevance to the Council is in relation to medical purposes and disclosure will only be permitted where the following three criteria are **ALL** met:
- The disclosure is made to a health professional.
  - The disclosure is made for medical purposes.
  - The person making the disclosure reasonably believes that the subject has given consent to the disclosure or the subject cannot give such consent (for example, because they are unconscious).

## **GENUINE OCCUPATIONAL QUALIFICATION**

- 29 The Equality Act 2010 provides limited exemptions for Genuine Occupational Qualification (GOQ) positions to restrict access to members of a particular sex. These exemptions can only be applied as a proportionate means of achieving a legitimate operational need. However, efforts should be made to enable Trans employees to work in positions, including those covered by GOQs, consistent with the gender with which they identify.
- 30 Where a person has a gender recognition certificate they must be regarded as being that sex for the purposes of GOQ positions. As the gender history of an employee is a matter of strictest confidentiality, this information should never be shared.
- 31 Where an employee undergoing gender reassignment currently works in a GOQ position restricted to the gender they were assigned at birth, every effort will be taken to work collaboratively with them to either adapt the duties of the post to enable them to continue working in it or to redeploy them to a suitable alternative post.

## **MANAGING EMPLOYEES THROUGH TRANSITION**

- 32 One of the most important factors in the successful management and support of an employee's transition at work depends crucially on a line manager discussing with them how they would prefer to proceed and to follow an agreed process.
- 33 Each case will be different with individuals having their own particular needs. As stated in paragraph 17 above, transitioning is a personal process (rather

than a medical process), which involves a person expressing their gender in a way that differs from the gender they were assigned at birth. It should be noted that the first contact may just be to 'explore options'. Some Trans people may take several months or years to gradually explore the possibility of transitioning. Some may only change their outward gender presentation after a period of varying gender expression.

- 34 When an employee considers embarking on transitioning, the initial point of contact may vary according to the nature of the workplace and preference of the individual but could be; a colleague, immediate Line Manager, a Senior Manager, Human Resources Advisor, Corporate Officer (Equality and Diversity) or another employee, all must maintain confidentiality except as agreed otherwise by the individual.
- 35 The transition period is a very stressful time, so a sensitive, supportive and sympathetic approach is required, therefore Human Resources must ensure that line managers work closely with their employees to ensure that the transition is as smooth as possible. During this period a number of issues will require to be considered. The Transitioning Checklist (Appendix 2) lists what actions should be considered.

### **Role of managers**

- 36 Every manager employed by the Council is responsible for;
  - promoting equal opportunities;
  - ensuring that all employees, service users and members of the public are treated with dignity and respect;
  - ensuring employees, service users, and members of the public's experiences are in accordance with the legal framework that protects individuals with protected characteristics like gender reassignment;
  - ensuring that employees, service users, and members of the public do not experience discrimination, bullying, or harassment on the grounds of their gender identity including gender expression;
  - ensuring that all employees are aware of the Supporting Trans Employees in the Workplace Policy and Guidance Policy, Equality Employment and Service Provision, Code of Conduct and the Bullying and Harassment policy;
  - challenging employees who behave inappropriately and/or discriminate and ensuring that the relevant policies and procedures are followed;
  - support employees to challenge discrimination from other employees, service users and/or members of the public;
  - agreeing a plan with the employee who is proposing to transition to ensure that they are supported throughout the process; and
  - ensuring that an employee who is proposing to undergo, or has undergone a process for the purpose of reassigning their sex.
- 37 Managers should ensure they are familiar with this policy and any other resources or systems in place to support the individual fully. Through discussion with the employee a main point of contact will be agreed. A meeting will be

arranged with the nominated person to have a more detailed discussion and support the employee in the process of transitioning at work.

- 38 Where appropriate the individual concerned should be provided with an agreed member of the Human Resources (HR) Team, this may be an HR Advisor and/or the Corporate Officer (Equality and Diversity) to provide guidance and advice to the employee and their manager. They may also wish to bring a friend or support with them to the first meeting.

### **Role of Individual Employees**

- 39 All employees have a personal responsibility to support the equal and fair treatment of all colleagues to ensure people are treated fairly, with dignity and respect and in a non-discriminatory manner.
- 40 All employees are responsible for:
- Complying with the Supporting Trans Employees in the Workplace Policy and Guidance.
  - Complying with the Bullying and Harassment policy.
  - Complying with the Equal Opportunities Policy.
  - Challenging and/or reporting discriminatory practice, behaviour and language

### **First Meeting**

- 41 Depending on the circumstances the employee may be anxious at the first meeting so it is important to spend time building trust and rapport. If an employee is transitioning it is good practice for the manager to consult with them sensitively about their needs in the workplace and whether there are any reasonable and practical steps that can be taken to help the employee as they undergo their transition. It may help to support discussion to use **Appendix 2** as a guide to work with the employee as a joint action plan for managing the Transition at work. This, along with any other notes of the meeting, must be kept strictly confidential in a secure location.

Developing a Joint Plan for Transitioning at Work:

- 42 The action plan could include:
- What support the employee will need and when.
  - The expected time when personal details, such as name change or gender on work records should occur, considering amendments that will need to be made on relevant systems as well as notification to any registered bodies.
  - Date of changing their gender presentation at work.
  - A procedure for adhering to any change in dress code/uniform.

- Agreeing the point at which the employee will commence using toilet/changing facilities and showers in their affirmed gender.
- Discuss with the employee when and how colleagues should be informed. The employee should decide if they wish to do this themselves or whether they wish to nominate another person to do this on their behalf and this maybe the assigned HR Advisor or the Corporate Officer (Equality and Diversity). Ask whether any training in Trans awareness and equality is needed.
- Discuss whether the employee's job role has a genuine occupational requirement to be a particular gender (see paragraph 29).
- Discuss what support if any they will need in the event that they do not wish to remain in their current role or location and what adjustments can be made. This will be the choice of the individual. **It is inappropriate and unlawful to redeploy someone who wishes to transition just because you think it is in their best interests.**
- Discuss time off required for medical treatment (if known), this may vary considerably depending on the needs of the individuals concerned. Discussion with the agreed point of contact and Occupational Health should also take place.

- 43 After the employee has transitioned into their affirmed gender role, it would not be appropriate to keep these records within their personal file. The same principle will be applied to service users. Any information relating to an individual's transition should be destroyed unless there is an essential reason for keeping it. If such reasons can be evidenced, the documents should be secured to restrict access to authorised personnel and must not be passed to any third party without the specific consent of the employee/service user. It may be useful to involve Occupational Health and The Council's Information Governance Service for advice. See Personal Data and Information paragraph 61.

Appendix 2 – the Transitioning Checklist should be used to assist in compiling an Action Plan.

### **Social Transition**

- 44 At some point the employee will likely wish to present themselves at work in their affirmed gender. When the employee indicates that they are ready to begin working in their affirmed gender, the plans agreed to under the previous section should be implemented.
- 45 It is important to allow the employee to be in control of the timetable for this and to be flexible in the case that the employee decides that the experience is too difficult, and wishes to delay any part of it. If appropriate, having regard to the timetable agreed with the employee and their current wishes, records and documents that have not been updated to reflect the employee's new name and title should be updated at the relevant time.

## Informing and Supporting Colleagues

- 46 How colleagues are informed of an employee's transition is a decision to be made by the employee who is transitioning. They should be offered a choice as to which colleagues are informed, and how the information is communicated. They can choose who they would like to inform their colleagues, and what method of communication they would like to be used.
- 47 The Council **must not** inform colleagues, service users or members of the public that an employee is intending to undergo or is undergoing or has undergone gender reassignment without the employee's **explicit written consent**.
- 48 It is never appropriate to inform colleagues, service users and members of the public that an employee has in the past undergone gender transition. This is a private matter since being Trans will have no bearing on that person's ability to do their job.
- 49 With regard to the change of name, all employees must refer to the Trans person by their preferred name and use pronouns appropriate to their affirmed gender. Any additional issues or areas of concern requiring further clarity can be discussed with the identified HR Advisor and/or the Corporate Officer (Equality and Diversity) and the individual themselves ensuring a needs led approach is applied.

## Employees in Public Facing Roles

- 50 An employee's gender transition may be unavoidably visible to the public. There is no general need or obligation to inform colleagues, service users or members of the public that a person is transitioning however, such information may be considered appropriate where the relationship with that individual was established prior to their transition and is to continue.
- 51 This however should only to be completed with permission from the employee who is transitioning. In such a case an explanation may be considered necessary; however the manager should discuss and agree with the Trans person if and how the information should be given. In these circumstances, it is important that managers support the employee in a positive manner and listen to how they feel about things and how they feel they are coping. Managers should be willing to explore equitable solutions. Colleagues may also benefit from advice on how to contribute.
- 52 Some employees may elect to move to another role during transition, however, they cannot be required to do so. Similarly, the way someone looks and the negative reactions this might be expected to elicit from service users and certain members of the public must not be a barrier to people undertaking a public facing role.

### **Time off for Appointments**

- 53 Trans employees who transition from male to female or from female to male hormonally and/or surgically will receive appropriate support at all the different stages in their transition, as necessary. Employees should liaise with their line manager to discuss and agree what time is required. If an employee is unable to attend work due to ill health then this will be supported through the Managing Sickness Absence Policy.

### **Employee facilities – Use of Changing/Showers Facilities and Toilets**

- 54 As part of the discussion process it should be agreed with the employee who is transitioning, at what point they will start to use the facilities of their affirmed gender. This is whilst the Council supports Trans people's right to use the facilities that they feel are the most appropriate to their gender. This includes the right of non-binary people to use the facilities that they feel are most appropriate to them, for example, male, female or accessible facilities.
- 55 Trans employees should not be asked, expected or required to use accessible facilities (unless they have a disability that requires this). Where a Trans person freely prefers to use accessible gender neutral facilities, perhaps because they have a non-binary gender identity, then this should be permitted.
- 56 Where sex specific facilities do not afford reasonable levels of privacy for employees (shared changing areas etc.) measures will be taken to make reasonable adjustments to meet this need. This is not a consideration to 'protect' Trans or non-Trans employees, but rather to ensure that all employees, irrespective of their age, disability, sex, gender reassignment, race/ethnicity, religion/belief or sexual orientation are accorded the right to privacy.
- 57 Where changing or shower facilities are open plan, then it is good practice to review this and at least make some provision (e.g. curtained spaces) where employees need not be in a state of undress in the presence of others.
- 58 Line managers may encounter objections from other employees, line managers in conjunction with HR should deal with these in a sensitive and understanding way whilst not denying the Trans person access to the facilities appropriate to their affirmed gender. Time should be taken to deliver Awareness Raising Training, provide further information and explain our legal obligations to alleviate concerns.

### **Uniform and Dress Code**

- 59 Where a corporate uniform is required then this must be worn in an appropriate way and in line with health and safety procedures. All employees of the Council must be presentable at all times to ensure a positive and professional image is maintained to enhance public trust and confidence. Trans employees would be fully supported with regard to the clothing they feel best represents their gender identity.

## PERSONAL DATA AND INFORMATION

### Retention

- 60 Employees at all levels who could learn about an individual's Trans history in the course of their work need to be very clear about the handling of this information. This could apply to:
- The information that can be entered into workforce files where other employees might have access.
  - Discussion about an individual's application form and applicant's job interview.
    - **Please note: Supporting documents such as degree certificates and references may not use the applicant's correct name and gender where these were obtained before they transitioned.**
  - The contents of Occupational Health Reports.
  - Information that can be passed from one medical professional to another in the course of referral or when discussing a case.
  - Information stored in medical records where others could access that data.
- 61 Any such information must be treated with the utmost confidentiality and included only as "special category data" (Data Protection Act 2018 and General Data Protection Regulations (GDPR)) in any records which must not be available to or accessible by anyone not specifically authorised or agreed with the specific employee to have access.

### Proof of Right to Work in UK

- 62 A passport, national identity card or Home Office issued residence document are the relevant primary identification documents that HR Managers should request in order to prove a person has the right to work in the UK. A birth certificate should only be requested if none of those documents are available. It is possible for a Trans person who is a UK national to obtain a UK passport with their new gender identity at the start of their transition.
- 63 If a Trans person does not have a UK passport in their current gender identity then their birth name and gender they were assigned at birth may be present on a document shown. In such cases the HR Manager should explain that retaining a copy of the document on the employee's record is a legal requirement imposed by the UK Government. They should also explain that if the employee later gains a new document then Human Resources can replace the document kept on file. Confidentiality must be maintained.

## RECORD KEEPING

- 64 All records should be updated to reflect the new name, title and affirmed gender simply on receipt of a written request from the Trans person. No formal evidence is required in support of the written request, although many Trans people may choose to provide a statutory declaration or deed poll confirming



their change of name. Records must be updated regardless of whether or not the Trans person has any medical treatment or gender recognition certificate.

- 65 After two years living in their affirmed gender with all their records updated (except their birth certificate), Trans people have the option of applying to the Gender Recognition Panel for a Gender Recognition Certificate which can update the gender on the person's UK birth certificate and provides enhanced gender history privacy protections.
- 66 A Trans employee is under no obligation to provide a Gender Recognition Certificate to their employer; nor, should anyone be asked if they hold one; under any circumstances. Managers and HR should ensure that all documents, public references (such as telephone directories, web information etc.) and employment details display only their name and title.
- 67 Wherever possible, all records that could disclose previous gender history should be withdrawn and destroyed as soon as the person makes a written request for their name and gender to be updated on their employment records. Any copies needing to be kept for legal reasons (for example, proof of right to work in the UK) in the person's Central HR file have to be treated as special category under the Data Protection Act 2018 and GDPR not disclosed to anyone not specifically authorised to see them.
- 68 When documents have been seen and copies taken at the point of starting employment (such as birth certificate) then every effort will be made to replace those with equivalent documents in the new name and affirmed gender. The Data Protection Act 2018 limits the purposes for which information may be kept. When the information is no longer necessary for the purpose for which it was collected, it must be destroyed.
- 69 In some instances, it is necessary to retain records relating to the gender someone was assigned at birth, for example, for pension or insurance purposes prior to obtaining legal gender recognition. However, once a person has obtained a Gender Recognition Certificate, these must be replaced with new details. Access to records showing the change of name and any other details associated with the individuals Trans status (such as records of absence for medical treatment) must be restricted to employees who need the information to do their work.
- 70 Such people could include those directly involved in the administration of a process, for example, Occupational Health Professional, or the person who authorises payments into a pension scheme. They do not include colleagues, line managers or third parties.
- 71 Breaches of confidentiality in relation to a person's gender history and Trans status must be treated in the same serious manner as disclosure of sensitive personal information (for example, medical details) of any other member of employees. In addition to being data protection violations, breaches of confidentiality can be gender reassignment discrimination or harassment under the Equality Act 2010. It must also be recognised that such disclosure after the

receipt of a gender recognition certificate may be subject to internal investigation in line with the Councils disciplinary procedures, and subject to criminal proceedings.

- 72 Trans employees may choose voluntarily to disclose information at a secondary level, for example, answering an employee survey or asking for support from a line manager. Again, strict confidentiality must be observed as further disclosure must not be made without the express written permission of the individual. This means that such questionnaires must be assessed for impact beforehand to determine how such circumstances are going to be handled in confidence.
- 73 It is not an offence to disclose protected information if the person cannot be identified or if they give their consent. Such consent however must not be forced, and should be written confirmation of consent from the individual concerned.

## **NATIONAL INSURANCE**

- 74 Employees who change their name will need to inform the local Department of Work and Pensions. People will be referred to in their new pronouns by HM Revenue and Customs, but any gender-specific calculations relating to their pension, national insurance contributions or benefits will be based upon the gender assigned at birth unless and until they receive a gender recognition certificate.

## **PROFESSIONAL REGISTRATION**

- 75 Employees that are professionally registered are advised to contact their professional bodies to find out whether there are any specific requirements in terms of name changes etc.
- 76 Where the organisation has to keep evidence of professional status or qualifications, it should be discussed with the employee how this information will be retained so as not to compromise or breach disclosure of protected information.

## **RECRUITMENT AND SELECTION**

### **Recruitment**

- 77 It is intended that there be no barriers to a person who identifies as Trans or people with Trans histories from applying for employment within the Council. All those involved in the recruitment and selection process should be made aware of their responsibilities to select fairly and without prejudice.

### **Confidentiality within the Recruitment and Selection Process**

- 78 Applicants do not have to disclose their Trans status during the recruitment and selection process including at interview, or as any condition of employment. If

applicants choose to disclose their status this must not be used as a reason for not offering the person employment with the organisation and also non-disclosure or subsequent disclosure are not grounds for dismissal.

### **Protection of Vulnerable Groups (Scotland) Act 2007**

- 79 Specific guidance for Trans people completing a Disclosure form is available for information on the [Disclosure Scotland website](#). Disclosure Scotland operates an application process for Trans people to assist in ensuring discretion is afforded to such individuals who do not wish the gender assigned at birth (and names) to be disclosed to the person or organisation requesting the Disclosure. Any questions on this process should be directed towards Disclosure Scotland Helpline; 0870 609 6006. (Please ask to speak in confidence with the Vetting Operations Manager). Existing employees may also seek advice from their named point of contact who can also assist with this process.

### **DISCRIMINATION ON GROUNDS OF GENDER REASSIGNMENT**

- 80 Discrimination on the grounds of gender identity including gender expression is against the Council's values. Discrimination on the grounds of gender reassignment is against the Council's values and is also unlawful. Any employee found to be treating another employee, service user or member of the public unfairly and/or in a discriminatory manner on either grounds would be in breach of the Bullying and Harassment Policy and maybe subject to investigation.

Some examples of discriminatory practice are:

- People refusing to associate with or ignoring them because of their Trans status.
- People refusing to use language requested by a Trans person regarding their affirmed gender, such as refusing to use their new name, or deliberately using pronouns that refer to the person's gender assigned at birth. Having their personal life and relation probed into.
- Having confidential information relating to the Trans status release without their consent.
- Not being allowed to use toilets, changing and/or showering facilities that are appropriate to the gender in which they live.
- Being treated less favourably than others due to their Trans identity with regards to recruitment and absence.
- Being refused access to services, facilities or premises due to prejudice from other employees or other service users.
- Being verbally abused or physically assaulted because of their Trans status.

## **GLOSSARY OF TERMS**

### **Affirmed gender**

The process of bringing the gender role and appearance into alignment with the gender identity, 'affirms' that identity. Thus the term 'affirmed' gender, is now becoming more common in describing the post-transition gender status. 'Affirmed' should be used in preference to 'acquired'; the latter is the language of the Gender Recognition Act, and is more appropriately used to describe the acquisition of a Gender Recognition Certificate and new Birth Certificate.

### **Gender expression**

How a person chooses to outwardly express their gender, within the context of societal expectations of gender. A person who does not conform to societal expectations of gender may not, however, identify as Trans.

### **Gender identity**

A person's innate sense of their own gender, whether male, female or something else (see non-binary below), which may or may not correspond to the sex assigned at birth.

### **Non-binary**

Gender identities that are not exclusively male or female are identities which are outside of the gender binary. People can be both male and female, neither, or their gender may be more fluid (i.e. unfixed and changeable over the course of time). Many view gender as a one dimensional spectrum with male on one end, female on the other, and non-binary in the middle – but the reality is that gender is often more complex.

### **Trans**

Trans is an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) Trans, Transsexual, Gender-queer (GQ), Gender-fluid, Non-binary, Gender-variant, Crossdresser, Genderless, Agender, Non-gender, Third gender, Two-spirit, Bi-gender, Trans man, Trans woman, Trans-masculine, Transfeminine and Neutrois.

### **Transitioning**

The steps a Trans person may take to live in the gender with which they identify. Each person's transition will involve different things. For some this involves

medical intervention, such as hormone therapy and surgeries, but not all Trans people want or are able to have this. Transitioning also might involve things such as telling friends and family, dressing differently and changing official documents.

### **Other useful terms**

#### **Asexual (or ace)**

Someone who does not experience sexual attraction. Asexual people can experience platonic attraction but may have no sexual desire or need within their relationships.

#### **Agender**

A person who does not have a specific gender identity or recognisable gender expression.

#### **Bisexual/Bi**

Refers to an emotional and/or sexual orientation towards more than one gender.

#### **Cisgender or Cis**

Someone whose gender identity is the same as the sex they were assigned at birth. Non-Trans is also used by some people.

#### **Gay**

Refers to a man who has an emotional, romantic and/or sexual orientation towards men. Also a generic term for lesbian and gay sexuality - some women define themselves as gay rather than lesbian.

#### **Gender**

Often expressed in terms of masculinity and femininity, gender is largely culturally determined and is assumed from the sex assigned at birth.

#### **Gender dysphoria**

Used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity. This is also the clinical diagnosis for someone who doesn't feel comfortable with the gender they were assigned at birth.

## **Gender fluid**

Having an overlap of, or constantly changeable gender identity and gender expression, this can include having two or more genders, having no gender, or having a fluctuating gender identity.

## **Gender reassignment**

Another way of describing a person's transition. To undergo gender reassignment usually means to undergo some sort of medical intervention, but it can also mean changing names, pronouns, dressing differently and living in their self-identified gender. Gender reassignment is a characteristic that is protected by the Equality Act 2010, and it is further interpreted in the Equality Act 2010 approved code of practice.

## **Heterosexual / straight**

Refers to a person who has an emotional, romantic and/or sexual orientation towards people of the opposite gender.

## **LGBT**

The acronym for lesbian, gay, bi and Trans.

## **Lesbian**

Refers to a woman who has an emotional, romantic and/or sexual orientation towards women.

## **Neutrois**

A person who has a neutral gender or no gender, it has considerable overlap with Agender - some people who consider themselves neutrally gendered or genderless may identify as both, while others prefer one term or the other.

## **Pansexual**

Refers to a person whose emotional, romantic and/or sexual attraction towards others is not limited by biological sex, gender or gender identity.

## **Pronoun**

Words we use to refer to people's gender in conversation - for example, 'he' or 'she'. Some people may prefer others to refer to them in gender neutral language and use pronouns such as they / their and ze / zir.

**Trans man**

A term used to describe someone who is assigned female at birth but identifies and lives as a man. This may be shortened to Trans man, or FTM, an abbreviation for female-to-male.

**Trans woman**

A term used to describe someone who is assigned male at birth but identifies and lives as a woman. This may be shortened to Trans woman, or MTF, an abbreviation for male-to-female.

## TRANSITIONING CHECKLIST

Point to discuss or consider when supporting employees who are transitioning

A person centred approach should be taken and all discussions/actions should be discussed and agreed on a 1:1 basis with the individual concerned.

Details	Date
<b>Main Contact</b>	
Identify and agree a single point of contact in a coordinated manner with the employee. This would normally be a manager, HR Advisor or the Corporate Officer (Equality and Diversity) or someone from Occupational Health	
<b>Timetable</b>	
<p>What is the likely timetable for transition e.g.</p> <ul style="list-style-type: none"> <li>• When will the employee be presenting themselves in their affirmed gender (change of dress/uniform attire)</li> <li>• Date of name change (individual to identify preferred name and pronoun)</li> <li>• Use of toilets, changing/showering facilities</li> <li>• Change of records</li> <li>• How and when will colleagues be informed and by whom (consider the method used when conveying this information)</li> <li>• How and when will external contacts be informed and by whom</li> <li>• Is training required</li> <li>• Consider the impact this change may have on their work and any adjustments that could be made</li> </ul>	



<b>What documents and records require to be changed</b>	
<ul style="list-style-type: none"> <li>• Payroll</li> <li>• Banking details</li> <li>• Direct Debit related to salary</li> <li>• Personal/department files</li> <li>• Pension Scheme</li> <li>• Trade Union Membership</li> <li>• Professional bodies</li> <li>• Employees Directory</li> <li>• Web details</li> <li>• Disclosure Scotland (if applicable)</li> </ul>	
<b>What identification needs to be changed</b>	
<ul style="list-style-type: none"> <li>• ID/Name badge (if the employee identifies as gender fluid then ensure ID/Name badges are provided in the names they specify)</li> <li>• Email address</li> <li>• Telephone system</li> </ul>	
<b>Transition Process</b>	
<ul style="list-style-type: none"> <li>• Is the employee taking any extended leave/ is this additional paid/unpaid leave</li> <li>• Is time off needed for medical appointments which may require to be taken during normal working hours</li> <li>• How can ongoing medical procedures be accommodated e.g. Male to female transition may need facial hair removal. Consider if flexible working arrangements can be applied</li> <li>• If the employee undergoes any surgery then they may be absent from work for some time. Reference should be made to the Sickness Absence Management Policy</li> <li>• Consider what arrangements have to be put in place to support the employee's return to work (consider input from Occupational Health)</li> </ul>	

## Quick Guide Trans Employees

1. **Sharing with someone:** Consider who, and if, you would like to share your Trans status or history with and what you would like them to support you with.
2. **Your personal timeline:** If you want to 'come out' at work or transition, what will your transition/coming out process look like? Will you need time off for anything?
3. **Talk to your employer:** Your employer has a responsibility for being mindful of your health and wellbeing. Would it benefit you to share with your employer? What do you want support with? Would you like to bring someone along to this meeting?
4. **Construct a timeline with your employer:** What do you want to happen and when? e.g. if you want to change your name and/or pronouns at work, taking time off, etc.
5. **Would you like to apply for a Gender Recognition Certificate?** Whether or not you have one can affect things like your pensions and benefits.
6. **Look up your organisation's policies:** For example, protection against harassment and discrimination, data protection, and taking time off.
7. **Find out about relevant and supportive legislation:** Equality Act 2010, and Gender Recognition Act 2004
8. **Sharing with the staff team:** Do you want everyone/just some/no one to know? Who is going to do this and how?
9. **Get support:** Do you have all the support you need? Consider other places where you can get support from (e.g. trades unions, LGBT organisations, occupational health).
10. **Open dialogue:** Would you like to maintain an open dialogue with your employer about how being Trans may impact you at work? What is the best way of doing this?

## Quick Guide Managers

1. **Support your employee:** Think about how you can best support your employee. What are their plans? What support do they want from you?
2. **Construct a timeline with the employee:** What does the employee want to happen and when? e.g. if they want to change their name and/or pronouns at work, taking time off, etc.
3. **Consider if you need to inform senior managers:** Remember confidentiality; **it is an offence for a person to disclose information acquired in an official capacity about their gender history to a third party without the Trans person's consent.**
4. **Look up relevant policies:** For example, protection against harassment and discrimination, data protection, taking time off, etc. Do new guidelines and/or policies for supporting Trans people need to be developed?
5. **Brush up on legislation:** Equality Act 2010, and the Public Sector Equality Duty and Gender Recognition Act 2004.
6. **Sharing with the staff team:** Ensure that the employee takes the lead with this. Does the staff team need to be notified? Who is going to do this?
7. **Find out more:** There are plenty of resources out there to help you to support your employee.
8. **Reflect:** What preconceptions might you or your staff team have about Trans people, their experiences and their wishes? If any, how could you address these?
9. **Dealing with harassment, bullying and discrimination:** How can you become aware of and deal with potential issues in the workplace? These can be directed from other staff and/or customers.
10. **Following up:** What is the best way for you to maintain an open dialogue with your employee about their progress and any additional support that they might need?