

Gender Reassignment Policy

Human Resources



Neath Port Talbot
Castell-nedd Port Talbot
County Borough Council Cyngor Bwrdeistref Sirol

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1. INTRODUCTION

Neath Port Talbot County Borough Council (NPTCBC) believes that transgender/transsexual employees have the right to equal treatment and protection from discrimination at work.

This Policy will use the term transgender as a generic term referring to individuals who identify as transgender or transsexual.

The Equality Act 2010 defines gender reassignment as a protected characteristic. This Policy is based on the principle that the Council will ensure that no transgender person will be treated less favourably on the grounds that they are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex. The Council respects an individual's right to self-identify as male or female and commits to recognising all employees of the council as the gender in which they choose to present.

The Council will seek not only to eliminate all discrimination on grounds of gender identity, but also to create a working environment based on good relations between all employees with shared commitment to respecting diversity and difference, in accordance with the Dignity at Work Policy. In addition, the Council promotes a work environment which enables employees to work to their full potential, provide a place where there is a culture of respect for human rights, and where employees feel valued.

This includes celebrating the diversity of its workforce, and believes that it will benefit from employing transgender individuals at all levels within the Council. The Council will seek to provide a positive working environment free from discriminations, harassment or victimisation.

2. PURPOSE AND SCOPE

The purpose of this policy is to ensure that:

- Employees who are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex are protected and supported in the workplace.
- Medical and employee records that are held by the Council reflect the gender reassignment status.
- Ensure that line managers and supervisors are aware of their duties and responsibilities around transgender employees

The scope of this policy is to:

- Ensure that employment practices support transgender employees and that they are treated with dignity and respect.
- Ensure that information governance and health record protocols are in place to facilitate an individual's choice to change their name and gender at any time.
- Ensure that directorates and services are supported to ensure they are able to comply with legal requirements contained in the Equality Act 2010 in respect of the Transgender protected characteristic and Gender Recognition Act 2004, as well as duties contained in the Data Protection Act 1998.

3. LEGAL FRAMEWORK

This policy has been developed to equip the council to meet its legal obligations under The Equality Act 2010. The provisions of the Act became law on 1 October 2010. It consolidates and replaces the existing equality law.

3.1 The Equality Act 2010

The Equality Act 2010 (The Act) protects people on the basis of gender reassignment from direct and indirect discrimination and harassment. This includes discrimination by association and discrimination against people perceived to have the protected characteristic of gender reassignment.

The Act states that:

1. 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 for reassigning the person's sex by changing physiological or other attributes of sex.
2. A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

A person must not be treated less favourably because of their protected characteristic.

3.2 Gender Recognition Act

The Gender Recognition Act 2004 provides transsexual people (aged over 18) with the opportunity to obtain legal recognition in their acquired gender by being issued with a gender recognition certificate (GRC). Anyone with a GRC will be legally recognised as their acquired gender, this means the person will acquire the rights and responsibilities of

their acquired gender from the date of recognition.

The Act also places a proactive duty on public organisations through the Public Sector Equality Duty (PSED) to promote equality of opportunity, foster good relations and eliminate unlawful discrimination between people who have the protected characteristic of gender reassignment and people who do not.

3.3 Meeting Our Legal Duties

The council will not discriminate on the grounds of gender identity in the way it recruits and selects employees. The council will ensure that transgender employees have equal access to all forms of training and development opportunities. The council will ensure that there is no discrimination on the grounds of gender identity in relation to dismissal of employees.

Associated Policies and Key Documents:

1. Safe Recruitment Policy
2. Disciplinary Policy and Procedure
3. Grievance Policy and Procedure
4. Management Of Change in Partnership Policy and Procedure
5. Performance Appraisals
6. Dignity at Work Policy
7. Employee Code of Conduct
8. Whistleblowing Policy

4. EQUALITY

The Council aims to eliminate discrimination in its structures and employment practices as well as to encourage changes in individuals behaviour and attitudes, and ensure equality of opportunity and treatment for all employees. Abuse, harassment or bullying (e.g. name calling, derogatory jokes, unacceptable or unwanted behaviour and intrusive questions) are serious offences, and should be dealt with under the Council's Dignity at Work Policy and Disciplinary Policy.

Transgender employees have equal rights and equal access to benefits, including equal recognition of their partner and family, and not must not be discriminated against on the grounds of gender or marital/civil partnership status.

Such Benefits include:

- Paternity Leave and Parental leave
- State pensions (received at a date relating to their age and gender once Gender Recognition Certificate received)
- Passing on pensions rights to partner/children

5. SUPPORT

If an employee is planning to undergo gender reassignment, and informs their manager of this, then the manager should meet with the employee to agree how he or she wishes to handle the matter within the workplace. Issues for managers to consider include:

- The expected timescales of any medical or surgical procedures (if the individual is proposing to undergo surgery)
- The amount of time off that may be required for treatment and/or possible side effects from any medication
- The expected point or phases of change of name and personal details and gender
- Whether the employee wishes to inform colleagues her/himself or would prefer others to do this
- Discussing with the employee changes to her/his employment records
- What other support the employee may need
- How to inform work colleagues, at what point and by whom
- Use of single sex facilities
- Any other matters which may include redeployment, suitable alternative employment and retirement in exceptional circumstances.

It should be noted, however, that there is no requirement for a transgender person to inform their employer of their gender reassignment status and the Council will not in any way penalise any employee for failing to make their transitioning status known to their manager, colleagues or Human Resources, or for any delays in making this information known.

Equally, the employee transitioning should appreciate that they cannot expect the Council to make reasonable adjustments on their behalf, if the Council is unaware of their status.

6. TIME OFF WORK

Transgender employees undergoing medical and surgical procedures relating to gender reassignment may require time off from work. There are specific rules under the Equality Act 2010 governing this. Employees undergoing this procedure should not be treated less favourably than they would be treated if absent due to any other sickness absence or injury.

Council Policy in relation to medical appointments should be followed in the usual way. Good practice suggests that managers should offer flexibility to individuals to take annual leave or rearrange working hours in order to attend additional appointments i.e. electrolysis. Managers should remember that it would constitute unlawful discrimination if they treat an individual undergoing gender reassignment less favourably than someone who is absent for some other medical reason.

Complications may arise as a result of medical treatment for gender reassignment resulting in prolonged incapacity for work. As with any long term illness, the individual will be supported and monitored by the manager with advice from Occupational Health and Human Resources. If incapacity continues beyond normal expectations for the process undergone, the Council's Maximising Attendance at Work Policy will apply.

The Council will provide support for employees returning after a break caused by medical and surgical treatment, and will adopt a flexible approach which endeavours (whenever possible) to meet the individual needs of employees who are recuperating in the usual way. It may be appropriate to discuss a phased return to work in accordance with the Council's Rehabilitation Scheme.

7. ADJUSTMENT OF RECORDS

Data Protection Act

For the purposes of the Data Protection Act 1998, gender reassignment and any information relating to an individual's gender history would constitute 'sensitive data' which can only be processed for certain specified reasons, as set out in the Act.

The Council will respect any request for anonymity and will only update records to include the chosen name and sex identified by the individual at an appropriate time when informed by the employee.

Once this has been done, all records of transgender employees will not refer to a previous name, and any records prior to a change of name or gender change will be updated.

Managers need to be aware that once an employee has informed them of their change in gender and/or if the employee is in possession of a Gender Recognition Certificate, it is unlawful to disclose their transgender status without their consent.

Some transgender individuals have not been able to gain legal recognition of their 'new' gender and in these cases, it may be necessary for some records (e.g. relating to pensions) to include a reference to legal sex.

Access to records showing the change in name and any other details associated with the employee's transgender status (i.e. records of absence for medical treatment) should be restricted to appropriate employees who 'need to know' for specific reason. This refers to those directly involved in the administrative process i.e. Human Resources, payroll or pensions.

8. PERIOD OF TRANSITION

Any employee who has taken the decision to go through the transition process can request a meeting with their line manager and/or a member of the Human Resources team to inform them of their decision. Whilst there is no statutory requirement, they may, however, wish to be accompanied by a trade union representative or work colleague.

The issues which could be discussed are provided below, however this is not an exhaustive list and the employee must feel comfortable at all times.

Toilet / Changing Facilities

A Transgender person should be free to select the facilities appropriate to the gender in which they present. For example, when a transgender person starts to live in their acquired gender role on a full time basis they should be afforded the right to use the facilities appropriate to the acquired gender role.

Dress Code

Managers should allow flexibility in dress codes to accommodate the process of transition from one sex to another. All transgender employees can expect to have any requests treated in the utmost confidence, and will be responded to in confidence. It is essential that the individual grants permission before their status is discussed with any third party.

Communication

Managers should not inform colleagues; service users and the public that an employee is intending to undergo, or is undergoing or has undergone gender reassignment, without the individual's explicit agreement.

The employee undergoing transition will have the right to request a meeting with colleagues in their area of work at which their status as a transitioning individual is explained. If such a meeting takes place, the manager will support the employee and advise all present of the confidentiality of the matter and that nothing can be discussed with any third party without the prior consent of the transgender employee. Failure to observe these rules of confidentiality may result in disciplinary action.

For those working alongside the person, there may be some training and support needs. It may be useful to look at these along two levels – specific issues regarding the employee and broader awareness about gender reassignment. It is recommended that managers should:

- Include sufficient information to convey the facts
- Not go into too much detail
- Respect the wishes of the transgender employee and their right to medical confidentiality in terms of discussing detailed personal matters
- Pitch the information at a level and style appropriate to the audience involved
- Remember to include the name that the employee wishes to be known by in their new gender.
- Remind employees of their duty to maintain confidentiality and that the Council is committed to creating a working environment in which all employees are treated fairly and with dignity and respect.
- Provide details of how colleagues might seek further information, should they need to

9. RECRUITMENT CONSIDERATIONS

In most cases, the gender of an individual has no bearing on their ability to do their job. The Council is committed to ensuring that potential employees are not discriminated against in the recruitment process. It should not be expected that applicants and interviewees for employment would necessarily wish to disclose their transgender status. There is no obligation for a transgender individual to disclose their status as a condition of employment. Moreover, non-disclosure, or subsequent disclosure, will not be grounds for dismissal.

If an employee has transitioned prior to joining the Council and has disclosed this, the Council should not mention their transgender history during any employment process. This includes employees selected for promotion. Any forms and documents relating to transgender status that are provided during the interview and resulting pre-employment checks will be considered confidential and should be restricted to appropriate employees and the individual themselves.

Genuine Occupational Requirement (GOR)

An employer may apply, in relation to work, a requirement to have a particular protected characteristic if the employer can show that having regard to the nature or context of the work. A GOR is rarely used in this Council, however in order for a GOR to apply the following criteria must be met:

- The requirement is an occupational requirement;
- The application of the requirement is a proportionate means of achieving a legitimate aim; and
- The applicant or worker does not meet the requirement; or,
- Except in the case of sex, the employer has reasonable grounds for not being satisfied that the applicant or worker meets the requirement.

An example of a GOR in relation to gender reassignment may be a requirement to not be a transgender individual.

Where there is genuine occupational requirement for a job to be carried out by a particular gender, it will be necessary for the transgender person to disclose their status to the panel.

This will not apply where the individual has obtained a Gender Recognition Certificate.

Where an employee intending to undergo gender reassignment is already employed in a post covered by a GOR prior to a change of gender, it could be beneficial for the employee, the Council and service users if the employee could be redeployed. In these circumstances, options should be discussed early in order to agree a satisfactory arrangement.

Internal job search and retirement

A member of staff undergoing gender reassignment may ask to be assisted to search for a different role in the Council or to take voluntary redundancy. In this case, the Council's ER/VR/CR Scheme would apply and the necessary criteria met.

An employee may seek support to change jobs within the Council, if they feel working in a different role may support them as a transgender individual. This may be supported by management as a reasonable adjustment as required under the Equality Act 2010.

References

When references are being provided for a transgender employee, this must be factual and based on the employees current gender. Guidance on providing references is available on the HR Intranet under Safe Recruitment.

Certificates

As part of the Council's Safe Recruitment Policy, details of registration with professional bodies (if applicable) and certificates are kept on file. The manager should discuss with the employee concerned how to retain such evidence on file – if, for example, certificates are in the individual's original name – so as not to compromise or breach disclosure of personal sensitive information.

10. MONITORING

The Council carries out equality monitoring on its staff. In Wales, the Equality Act 2010 (Wales) Regulations 2011 place upon public authorities a specific legal duty that requires the Council to have effective arrangements in place to monitor equality and have in place to gather, analyse and publish employment monitoring data.

Such monitoring is carried out in line with the Data Protection Act 1998.

11. RESPONSIBILITIES

The Council has ensured that:

- Where equality policies refer to discrimination on grounds of sex, this also refers to discrimination on grounds of gender identity and gender reassignment due to the Gender Reassignment Regulations to The Equality Act.
- Employees and managers are aware of the Council's statutory responsibilities in relation to gender reassignment as an employer and service provider.
- The Council has trained an employee in the implementation of this policy in order that they can act as a mentor for transgender employees. Further information is available from the Human Resources Team.

12. DIGNITY AT WORK

The Council will seek to provide a supportive environment for those who make claims of discrimination or harassment. This includes challenging discriminatory behaviour by employees, managers or service users. Acts of discrimination (direct or indirect) on the grounds of gender identity, harassment, victimisation or abuse will be treated as a serious offence, and will not be tolerated.

Employees who feel they are being discriminated against on grounds of gender identity by other employees or the public should raise the matter under the Council's Dignity at Work Policy, which will, if the accusation is upheld, be treated as a serious disciplinary offence.

13. REVIEW

This policy will be subject to review as a result of legislative changes and/or operational requirements.