

# Isle of Wight Council

# **GUIDELINES FOR TRANS EMPLOYEES POLICY**

## **LA Model Policy –December 2017**

References to "The Council" in this policy shall apply to Medina House School.

References to "Elected Members" in this policy shall apply to Governors of Medina House School.

References to "senior managers/managers" in this policy shall apply, as appropriate, to the Headteacher, Deputy Headteacher and members of the SLT.

References to "policies/procedures" in this policy shall apply to policies and procedures approved by the governors of Medina House School.

Approved by Governing Body .....

Signed ..... Matt Atkins  
Chair of Governors

Review Date; March 2022







**Isle of Wight Council**

# **GUIDELINES FOR TRANS EMPLOYEES**

December 2017

## Document Information

<b>Title:</b>	<b>Guidelines for Trans Employees</b>
<b>Status:</b>	
<b>Current Version:</b>	<b>V1</b>
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<b>Consultation:</b>	Unions and staff equality group
<b>Approved by:</b>	CMT, Unison, Staff equality group
<b>Approval Date:</b>	January 2018
<b>Review Frequency:</b>	Three Years
<b>Next Review:</b>	January 2021

Version History		
Version	Date	Description
V1.0	December 2017	Final

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## Introduction

The Isle of Wight Council is committed to ensuring that trans employees receive equal treatment and protection from discrimination at work.

This policy is based on the principle that we will ensure that no trans person will be treated less favourably on the grounds that they intend to undergo gender reassignment, are in the process of undergoing gender reassignment, or have at some time in the past undergone gender reassignment. We respect an individual's rights to self-identify as male or female and commit to recognising all employees of the council as the gender in which they choose to present.

This policy is based on guidance issued by the Equality and Human Rights Commission (EHRC) and ACAS.

Becoming an employer of choice is a key goal for the Isle of Wight Council and it is therefore vital that we are able to recruit and retain skilled staff with values that reflect our own from across the communities we serve. This includes ensuring that trans people are welcomed and respected and that our policies do not unintentionally operate in ways that discriminate against trans staff.

## Scope & Purpose

The purpose of this policy is to ensure that:

- Staff who have undergone, or who are undergoing gender reassignment, are protected in the workplace.
- Medical and staff records that are held, reflect the gender reassignment status.

The scope of this policy is to:

- Ensure that employment practices support trans staff and that they are treated with dignity and respect.
- Ensure that information governance and health records protocols are in place to facilitate an individual's choice to change their name and gender at any time.
- Ensure that services are supported to ensure they are able to comply with legal requirements contained in the Equality Act 2010 in respect of the trans protected characteristic and Gender Recognition Act 2004, as well as duties contained in the Data Protection Act 1998 and General Data Protection Regulations 2018.

# Legal Framework

## 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 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.

The Act states that:

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.

A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

i) Discrimination

For example, if a person is treated less favourably because of their protected characteristic.

ii) Harassment

For example: a person engages in unwanted conduct against another person related to a relevant protected characteristic, which has the purpose or effect of violating the other person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the other person.

## Gender Recognition Act

The Gender Recognition Act 2004 provides transsexual people 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 'for all purposes' as their acquired gender, this means holders of a GRC are given specific protection in law (see section 7.1). When someone has a GRC any disclosure, without consent, of information about that person's gender history, which has been obtained in an official capacity is an offence.

## **Data Protection Act**

For the purposes of the Data Protection Act 1998, gender reassignment and any information appertaining 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 and GDPR

## **Gender Equality Duty**

Since April 2007, there has been a requirement of public authorities to comply with a general duty to proactively promote gender equality. There is an explanation of terms detailed below in Appendix 1.



## Key Principles

You are responsible for your own behaviour and are expected to comply with the policy, ensuring that you treat trans colleagues with dignity and respect.

You must ensure that you have a respectful and flexible approach towards people who are considering undergoing, have undergone, or are in the process of undergoing gender reassignment. This principle extends to all trans people regardless of whether they live continuously, or temporarily, in the gender role that is opposite to their natal sex.

The principle of respect applies to all, including people who choose to cross dress for reasons that are not associated with gender reassignment. This policy however, applies specifically to people who have the protected characteristic of gender reassignment, as defined by the Equality Act 2010, i.e. people who are proposing to undergo, are undergoing or have undergone a process (or part of a process) of gender reassignment.

You play a key role in ensuring that all of the information that the Council processes:

- Held securely and confidentially
- Obtained fairly and efficiently
- Recorded accurately and reliably
- Used effectively and ethically
- Shared appropriately and lawfully

## **Appointment and Employment of Trans staff**

This section of the policy addresses the sensitive and appropriate responses that are expected of you with regard to the employment of trans people and the management of trans staff undergoing gender re-assignment.

### **Protection**

It is unlawful for an employer to discriminate against an employee, job applicant or contractor on the grounds of that person's gender reassignment. Discrimination in this context means treating a trans person less favourably than you treat (or would treat) another employee who is not undergoing gender reassignment.

Protection applies from the moment at which the person indicates their intention to start the reassignment process and covers recruitment, transfer, training and promotion, access to work-related benefits, facilities and services, dismissal, and any other associated detriment. It is also unlawful to instruct someone else to do something discriminatory – for instance, telling an employment agency not to hire a trans person.

Protection also applies to those who are perceived to have the protected characteristic of gender reassignment. They may suffer discrimination, bullying and harassment without their having any intention of gender reassignment.

The trans person who changes gender before entering employment is under no obligation to either inform management or colleagues of their gender reassignment. If however they choose to voluntarily disclose their change of gender at the recruitment stage, or to Human Resource advisors, this information must not be disclosed further without the specific authorisation of the individual concerned.

### **Exceptions**

There are also some limited temporary exceptions which apply during the process of gender reassignment only, for example, if a post requires the holder to provide vulnerable individuals with personal services, and the employer reasonably believes those services cannot be effectively provided by someone undergoing gender reassignment. This exception will apply only in very rare circumstances, for example if the patient/service user does not have the capacity to consent. This would not, however, apply to someone with a full Gender Recognition Certificate.

### **Gender Recognition Certificate and Non-disclosure**

Trans people should not be made to obtain, nor made to feel that they should obtain, a Gender Recognition Certificate. Trans people without a GRC should not be made to feel incomplete in their acquired gender. Their rights,

obligations and gender status at work will not alter with the possession of a GRC (except in rare situations as indicated above).

Many trans people wish to keep their transsexual status private, whilst others are willing to discuss it confidentially or even openly. There is no obligation on a trans person to disclose their status as a condition of employment.

Interviewees may not necessarily want to disclose their transgender status at interview, and it is not a question that should be asked. However, if an exception applies (see Section 7.2 above), an individual would be expected to disclose his or her transgender status and an interviewer would therefore be able to ask an appropriate question. The exceptions will not apply if a person has obtained a Gender Recognition Certificate.

On joining the organisation, some transgender people may not have any identification documents, qualification certificates etc. in their acquired gender, and so may have to disclose their trans identity. You must ensure that this information is kept confidential.

### **Lawful Disclosure of Information**

The Gender Recognition Act (GRA) defines information about a person's application for gender recognition and a person's gender history as 'protected information'. This means that if an employer or employee acquires the information in the course of official duties, it is a criminal offence to disclose it. It is not an offence, however, to disclose 'protected information' if the person cannot be identified or if the individual gives their consent.

### **References and Certificates of Qualifications**

When you ask for a reference for a trans person, he or she must provide it, without any hint or reference to the fact that the person has had a change of gender. If you have to keep evidence of professional status or qualification, you should discuss with the individual 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 the disclosure of protected information.

The individual should identify to their line manager the point at which their new gender identity is formally established, so that appropriate amendments can be made to payroll/HR records and concomitant matters dealt with (for example, identity badges, the individual's choice of name for email, intranet address entry etc).

### **DBS Procedure**

DBS applications should not be a problem. There is a special process which can be followed in order to avoid the problems that would otherwise be faced in complying with the requirement to make truthful statements and revealing gender history. The DBS has a dedicated number for Transgender people to ring which is 0151 676 1452 or email [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk)

Disclosures sent will not reveal the applicant's former identity unless they have an offence or caution that is not 'protected' (as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)) that has been recorded in that name in police records. If this happens the Police National Database (PNC) will automatically print these off in the old name under the new name and gender on the form. In this instance the DBS office (if they have been contacted prior to the DBS submission via the contact details above) will stop the process and get in touch with the trans person, allowing them time to change their details on the PNC. They will then issue the certificate with all names the same.

## **Payroll/HR Records**

Suitable evidence to account for the transition and name change should be presented to the Human Resources Advisor for their work area. This should include:

1. A letter from the GP or gender specialist confirming that they are undergoing gender reassignment.
2. Evidence of change of name – in the form of any of the following: A Name Change Deed (eg Statutory Declaration); Driving licence, Passport.

On receiving this information, you should ensure that all documents, public references (such as telephone directories, prospectuses, web biographies) and employment details reflect the acquired gender of the person. This will prevent any breach of confidentiality. Where documents have been seen and copies taken at the point of starting employment (such as a birth certificate) then every effort should be made to replace those with equivalent documents in the new name and gender. It is the responsibility of the employee to provide new versions of documentation.

To maintain confidentiality, where possible new records should be produced; for instance the cover of a personnel file should be replaced and a new name included rather than the old file have the name crossed out and replaced. In some instances, however, it may be necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes prior to obtaining gender recognition. It should be noted that once a person has obtained a Gender Recognition Certificate these **MUST** be replaced with new details; however, it is the responsibility of the employee to provide updated documentation e.g. qualification certificates.

## **Recruitment Compliance**

Proof of Identify: There should be enough scope for trans applicants to provide documentation in their acquired gender.

Certificates:

Where evidence of educational qualifications will disclose a previous name and therefore previous gender identity, then total confidentiality must be respected and measures taken to ensure it.

## **Managing Trans Staff**

The process of transition can be very stressful requiring support and sympathetic handling from all concerned, and there is an obvious need to adopt the right approach in the workplace where the transition can have significant impact both upon the individual and upon colleagues. The following section describes stages in the process, and the considerations and actions expected you; managers can at any time seek advice and support from their HR manager.

### **Developing a joint plan for managing the transition at work**

Once the trans member of staff has indicated their intention to start the reassignment process, you may suggest a meeting with them and a Human Resources Advisor . The employee should be given the opportunity to arrange to be accompanied, should they wish, by a trade union representative or work colleague. The purpose of that meeting would be to ascertain:

- The expected point, or phase, of change of name, personal details and social gender.
- Confirming who they want as their main point of contact within the organisation. This will typically be their line manager.
- Whether the employee wishes to inform their colleagues themselves, or would prefer this to be done for them.
- The expected timescale and time off for medical and surgical procedures
- Agreeing a procedure for adhering to any dress code
- Agreeing the point at which the individual will commence using single sex facilities in their new gender (such as toilets and changing areas).
- What amendments will need to be made to records and systems.

If a trans member of staff is working in a gender specific role, for example a female working with female service users, consideration would need to be given to the implications should they transition to a male as they would no longer be able to fulfil the gender specific requirement for the role. A risk assessment would be carried out and they would be placed on the redeployment register. Every effort would be made to find the individual suitable alternative employment, however, if this was not possible notice would be served and their employment may be terminated.

### **Relocation, remaining at same location or redeployment**

A trans person may want to be relocated during the transition period if, for example, their working environment is stressful, perhaps because they have direct contact with the public. Relocation may not always be appropriate or feasible and any decision should always be made in consultation with the individual. Some employees may prefer to stay within the environment in which they have made friends and where they feel supported.

In very rare cases, an individual may feel it is no longer tenable for them to continue to work in the same area/department and that to continue to do so may have a detrimental effect on their health and wellbeing. In such cases, following discussion with their line manager and Human Resources manager, the individual may be placed on the redeployment register. In such cases, although their employment will not initially be 'at risk' alternative work cannot be guaranteed, although every effort will be made to redeploy the individual.

If after a reasonable period alternative work cannot be found, you, as manager should meet with the individual and their representative (should they have one) and the HR advisor to discuss their future employment. This may include ending their employment.

## **Informing colleagues**

It is good practice to take responsibility for informing whoever needs to know, unless the individual going through the process would prefer to do this. However, you should not inform colleagues, clients and the public that an employee is intending to undergo, or is undergoing, gender reassignment, without the individual's explicit consent. If the transgender individual prefers to inform people themselves, then ideally you should be advised when the disclosure is to take place and in what detail, so that they can provide appropriate support. Generally it will only be those who knew the person before the transition who will have to be informed. There will be some others who need to know for administrative processes, such as payroll, however confidentiality should be maintained as much as possible.

Once the transition period is complete, it is never appropriate to inform colleagues, clients and the public that an employee had in the past undergone gender reassignment. If such an employee is in possession of a Gender Recognition Certificate it is unlawful to disclose their previous transgender status without their consent.

## **Briefing of colleagues**

Whether or not the individual remains in the same post, a plan for support both during and after the transition will be needed to address such questions as what information will need to be provided for colleagues. At the point of change of gender, it is common for trans people to take a short time off work as annual leave and return in their new name and gender role. If this is the case, this period can be used as an opportunity to brief colleagues and to ensure that managers stress the need for proper treatment of the employee. During this period, the opportunity should be taken if possible, to ensure that workplace records and IT systems are appropriately amended. All briefings should be complete by their return. Other arrangements should be made in consultation with the Trans person who does not take leave.

Education should take place on two levels: general information about trans and specific information to enable people to understand the needs of the person involved.

## **Expected timescales and time off for medical and surgical procedures**

The law recognises that someone who is undergoing a medical transition to their new gender will require sometimes substantial periods of time off work in order to undergo treatment. As far as possible, you should discuss how much time the individual will need to undergo gender reassignment treatment. The law does not specify a minimum or maximum time that employers should allow for transitioning. If the Trans employee is absent for a long period however, termination of their contract, as laid out in the Sickness Absence Policy, may apply. If, for example, the Trans employee has taken time beyond that needed for transition (including psychological considerations), or the transition process has caused complications which renders them unable to return to work.

An employee who undergoes medical or surgical treatment relating to gender reassignment, will receive appropriate support for this. It will be managed through the Sickness Absence, Special Leave and Flexible Working Policies. You should try to offer flexibility to individuals who may need to take holiday or rearrange working hours in order to attend additional appointments (for instance for electrolysis) outside of work. You 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 where it would be reasonable to allow a similar amount of time off work. It is also unlawful to dismiss an individual for reasons of impending gender reassignment treatment.

## **Agreeing a procedure for adhering to any dress code**

It is good practice to allow flexibility regarding the department's dress code during transition, and to respect the individual's wishes as to when he or she is comfortable to change into the form of dress appropriate for their new gender. However, having made the decision to dress in the acquired gender, the individual will be expected to dress appropriately for their local work environment.

## **Agreeing the point at which the individual will commence using single sex facilities in their new gender**

You and the employee should agree the point at which the use of facilities such as changing rooms and toilets should change from one gender to the other. It is advised that the individual starts to use the facilities for their new gender at the point where they begin to live in that gender, irrespective of the progress of surgical procedures.

It is not acceptable to treat a trans person as though they have a third sex, i.e. neither male nor female. It is therefore not acceptable to insist on a trans employee using separate facilities such as a disabled toilet, in the long term. A trans employee should be granted access to 'men only' or 'women only' according to the gender in which they permanently present. Under no



circumstances should they be expected, after transitioning, to use the facilities of their former gender.

### **Identifying what managers and colleagues can do to make the transition easier**

You should refer to the trans person by their new name and use pronouns appropriate to their new gender role. In the early days it is recognised that people may occasionally get mixed up and use the trans person's former name and/or gender pronouns. You should discuss the potential for this with the trans person in the planning meeting. The trans person should be aware that this could happen and be prepared to make allowances.

You must also be aware of the genuine concerns that members of staff may have, and resolve any issues quickly through sympathetic guidance, support, information and education. In such instances though, the trans person's right to be themselves should not be compromised or questioned. Unfortunately, no matter how much preparation is made and support given, there may still be people who do not understand the situation or are unsympathetic. It is advisable to discuss this in advance with the trans person and agree informally how they would prefer this to be managed. Any incidents of misconduct, harassment, bullying or victimisation should be dealt with quickly and in accordance with the harassment and bullying policy and/or disciplinary procedure.

### **Pensions**

As a minimum, the individual should be treated as a member of their acquired gender from the date of transition.

A trans person who has received a full Gender Recognition Certification (GRC) will be treated according to their acquired gender for state pension purposes. This means that their state pension age will be the same as for other members of their acquired gender. Trans individuals who do not obtain a full Gender Recognition Certificate retain their state pension rights in accordance with the sex that is recorded on their birth certificate.

Definitions and commonly used terms regarding trans people

Word	Description
Androgyne / polygender people	Those who have non-binary gender identities and do not identify as male or female, and others who may define themselves as gender variant.
Acquired gender	The gender of a person who has had their gender reassigned and/or legally recognised. It is possible for someone to transition fully without surgery.
Gender	A person's perceived sociological status as either a man or a woman, and an individual's own psychological sense of self as either a man or a woman. The terms 'masculine' and 'feminine' are gendered terms connoting these categories.
3 <sup>rd</sup> Gender	Individuals who do not personally identify as either man or woman.
Gender dysphoria	Dysphoria, a Latin word to dislike. Gender dysphoria is a widely recognised medical condition. It is a drive to live in the opposite gender to that in which a person has been registered at birth
Gender identity	Everyone has a gender identity it describes the psychological identification of oneself as a boy/man or as a girl/woman. For some individuals this can be problematic e.g. Trans people.
Gender Recognition Act	The UK law which allows transsexual people to obtain a gender recognition certificate.
Gender Re-assignment	A process carried out under medical supervision for reassigning a person's sex by changing physiological or other characteristics of sex. This may include counselling, hormone treatment or surgery. Equality Act 2010 Gender reassignment is a protected characteristic.
Gender reassignment surgery	Medical term for what transsexual people often call gender confirmation surgery, surgery to bring the primary and secondary sex characteristics of a transsexual person's body into alignment with his or her internal self-perception. Some people do not desire surgery, or do not want surgery to feel comfortable with their body in relation to their gender identity.
Gender Recognition Panel (GRP)	A panel of legal and medical professionals appointed to consider application for a gender recognition certificate <a href="http://www.grp.gov.uk">www.grp.gov.uk</a>
Gender Variance or Transsexualism	A desire to live and be accepted as a member of the opposite gender often accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to make one's body as congruent as possible with one's preferred sex

Intersex People / Intersexed	Individuals who have indeterminate sexual characteristics at birth and who may have been assigned to the gender of the most dominant genitalia at or soon after birth. The majority of intersex people do not identify as Trans. Other may identify as Trans and choose in adulthood to undergo gender reassignment treatments to enable them to live in their preferred gender role, which is opposite to that in which they were raised.
Pansexuality	Pansexuality or omnisexuality is sexual attraction, sexual desire, romantic love, or emotional attraction towards persons of all gender identities and biological sexes. Pansexuals have the capability of attraction to others regardless of their gender identity or biological sex.
Trans person / people / man / woman	A general term commonly used only as an adjective by those who identify themselves as transgender, transsexual or transvestite. Where Trans people have transitioned permanently, many (but not all) prefer to be regarded simply as men and women.
Transition	Transition includes some or all of the following cultural, legal and medical adjustments; telling one's family, friends, and/or co-workers; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) some form of surgical alteration.
Trans FtM	A female to male transsexual person. Someone who is changing, or has changed, gender role from female to male. Also described as a 'Trans man'.
Trans MtF	A male to female transsexual person. Someone who is changing, or has changed, sex characteristics from male to female. Also described as a 'Trans women'.
Transgender	A transgender person is someone who belongs to one biological sex but permanently, though only partially, takes on the appearance of the opposite sex. A transgender person chooses to keep his/her original genitalia and does not want full gender reassignment surgery. Within the context of this policy, the terms Trans, transgender are used as an inclusive, umbrella term to describe the diversity of gender identity and gender expression.
Transphobia	A fear and strong dislike of Transgender people, which can lead to hatred resulting in verbal or physical attacks and abuse.
Transsexual	A transsexual person is someone who proposes to, starts or who has completed a process (gender reassignment) to change his or her sex.
Transitioning	Transitioning also known as 'reassignment'. The process of going through a change of sex, at the end of which, the person will be living in the opposite gender to that which they were assigned at birth.

Transvestite/cross dresser	A term used to describe a person who dresses in the clothing of the opposite sex. Generally, transvestites / cross dressers do not wish to change their body and do not necessarily have gender dysphoria.
Sex	A person's perceived biological status as either Male or Female.
Sexual Orientation	Describes an individual's enduring physical, romantic, emotional and/or spiritual attraction to another person. Trans people may be heterosexual, lesbian, gay, or bisexual or asexual.
Stealth / Passing	Living in a way where nobody knows your previous gender history. Passing when a Trans person is not visible as a Trans person. Those who do not 'pass' have some residual features of their birth gender – which often means that other people regard them still as their birth gender.