

# Transgender and Gender Identity Guidance

## Purpose

Southwark Council's (The Council) Respect at Work statement sets out our commitment to creating a work environment free of bullying and harassment, where everyone is treated with dignity and respect. This guidance sets out the support that is available to employees when they are having discussions and making decisions about gender identity and transition.

## Scope

Gender Identity is a person's sense of self as a man, woman, non-binary person or other sense of gender. A person's gender identity can follow directly from the sex they were assigned at birth, but this is not always the case.

The Equality Act 2010 outlaw's discrimination in employment and vocational training on the grounds of gender reassignment. Protection applies to people proposing to undergo, are undergoing, or have undergone a process or part of a process to reassign their sex by changing their physiological or other attributes of their gender.

The Council is committed to implementing this protection and ensuring that all employees feel included, respected and receive equal treatment. All staff must ensure that transgender employees are treated with respect. It is unlawful to refuse to work with someone with the protected characteristic of gender reassignment, even if the refusal is on the grounds of religious belief.

Our commitment applies to all current and potential employees, apprentices, some self employed workers, contract workers, actual and people seeking or undertaking vocational training. The Council has extended this commitment to include volunteers. It applies to all aspects of employment with the Council including the process of recruitment, training, promotion, terms and benefits of employment, and leaving.

Furthermore, the council respects an individual's right to self-identify as male or female, or neither, and commit to recognising any employee as the gender in which they choose to present. This goes beyond the Equality Act and we ask that all staff ensure they have a respectful and flexible approach towards people whether they live continuously in a gender role that is the same or different to the one assigned at birth/natal sex.

The guidance is aligned to the Council's approach to equality and the Respect at Work statement.

The Equality Act 2010 and Gender Recognition Act 2004, the two key pieces of legislation that protect transgender and transsexual people, were taken into account in the formation of this guidance together with employer good practice.

# Contents

This guidance document covers the following topics:

## Page

1. Definition
2. Support at work
  - Starting your transitioning journey at work
  - Time off from work
  - Informing your manager
  - Informing colleagues
  - Personal Pronouns
3. Dress codes
4. Use of facilities
5. Recruitment & appointment
  - Interviews
  - Employment Checks
6. How we will handle your data
  - Documentary Evidence / Proof
7. Pensions
8. Considerations and exceptions
9. Version and review
10. Appendices
  - Appendix 1 - What the Law says
  - Appendix 2 - Explanation of terms

## 1. Definition

- 1.1. Transgender - a term applied to individuals who have a gender identity or gender expression that differs from their assigned sex. Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual. It is recommended that you only refer to someone as transsexual if they tell you that's how they identify; otherwise the term Transgender person or Trans is best used. The word transgender should be used as an adjective, never a noun, that is, an individual is transgender, rather than an individual is a transgender. Additionally, the term 'transgendered' is not suitable. Transgender, often shortened to Trans, is an umbrella term which includes other people and gender expressions; please refer to the glossary of terms.
- 1.2. Gender identity – a person's perception of having a particular gender, which may or may not correspond with their birth.

## 2. Support at work

- 2.1. The best way to support someone depends on the individual circumstances and their personal perspective and needs but an empathetic and compassionate approach is central to encourage open and positive discussion. This guidance covers general responses to some of the key issues. It does not anticipate every situation on gender identity and transition and circumstances may need to be assessed on a case-by-case basis.
- 2.2. Managers must be aware of the concerns that individuals may have, and resolve any issues quickly through sympathetic guidance, support, information and education. In such instances, the individual's right to be themselves should not be compromised or questioned.
- 2.3. Unfortunately, even with guidance and support, there may still be some individuals who do not understand gender identity and transition, choose not to, or are unsupportive of it. Regardless of this, everyone is expected to maintain respect for individual differences. Any incidents of misconduct, harassment, bullying or victimisation should be dealt with quickly and in accordance with Council's Respect at Work Policy / Individual Complaint's Policy & Procedure.
- 2.4. Where individual's feel they are unable to speak to their manager openly or need additional support, they may get in touch with Human Resources, their Trade Union, the council's LGBTQ+ staff network, the Council's Employee

Assistance Programme (EAP) or a relevant external body for help and guidance.

- 2.5. The Council offers all employees an EAP which is a useful source of support for employees facing any difficulty. It is a free, confidential service, available 24 hours a day, 7 days a week to all Southwark Council employees. A team of trained practitioners offer confidential, independent and unbiased information and guidance. You can get support by telephone, in writing or through face-to-face appointments. Employees can contact the service by calling 0800 756 3354 or by visiting <https://southwark.optimise.health>

### **Starting your transitioning journey at work**

- 2.6. Any employee either planning to undergo gender reassignment (transition) or who has indicated their intention to transition or who is already in the process of transitioning is encouraged to speak to a manager about the process so that we can provide the support required as early as possible. It is a matter of personal choice, whether a person transitioning seeks support and who they seek support from.
- 2.7. Once a member of staff has indicated their intention to start or where they are in the reassignment process (transition), their line manager may suggest a meeting with the employee, a relevant member of the Human Resources (HR) team and if they wish so, someone to accompany them to the meeting. This may be a trade union representative or work colleague.

### **Time off from work**

- 2.8. The Council appreciates that every person's transition is unique, can involve many different aspects and that time off work will vary according to the needs of the individual. An employee, who has counselling, medical or surgical treatment or other procedure, will receive appropriate support for this. As far as possible, managers should discuss with the employee how much time they will need. Time off will be managed through the Council's Special Leave, Flexible Working and Sickness Absence policies. The Council will give the employee a reasonable amount of paid time off from work for appointments relating to the transition process.
- 2.9. There isn't a set amount of time that would be allowed off, as there will be differing circumstances which will need to be considered on a case by case

basis. If the employee is absent for a long period of time, the management of this will be as outlined in the Council's policy for managing sickness absence.

- 2.10. Managers should try to offer flexibility to individuals who may need to take annual leave or rearrange working hours in order to attend additional appointments.

### **Informing your manager**

- 2.11. It is advisable that an individual informs their line manager of the point at which they will be attending work in their new gender, so that the 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, gender pronouns, intranet address entry etc.).

### **Informing colleagues**

- 2.12. Line managers with the support of HR will work with individuals to agree what information needs to be conveyed to work colleagues and when the information should be conveyed. It is good practice for employers to take responsibility for informing whoever needs to know, on behalf of the employee, unless the individual going through the process would prefer to do this themselves.

Our employees are entitled to their privacy and the Council will seek to protect them from intrusive enquiries. Individuals may wish to tell colleagues about their gender identity or transgender status or may prefer if this is done by someone else on their behalf. We will encourage the individual to do what is best for them and, if they do not wish to tell anyone, at any stage, their wishes will be respected. We will not inform colleagues, clients and the public about an employee's gender identity transition without the individual's **explicit consent**.

Regardless of an individual's gender identity or the stage of transitioning, it is never appropriate to inform colleagues, clients and the public of their past or present gender status. If an employee is in possession of a Gender Recognition Certificate it is unlawful to disclose their previous transgender status without their consent.

## **Personal pronouns**

- 2.13. Personal pronouns are the words that we use to describe each other in place of someone's name. Employees may prefer to be known by the gender pronouns they are most comfortable with. This is a matter of personal choice for each employee. Examples of gender pronouns can be viewed in the explanation of terms - Appendix 2. Employees should refer to individuals by their correct name (this may have changed) and ensure they use their correct pronouns. It is recognised that occasionally, in the early days, people may mistakenly use the employee's former name and/or gender pronouns. Managers should discuss the potential for this with the individual in the planning meeting.

## **3. Dress codes**

- 3.1. It is good practice to allow flexibility regarding the department's / local dress code during transition, and to respect an individual's wishes as to when they are comfortable to change into the form of dress appropriate for the gender in which they identify and appropriate for their work environment. In some cases, employees may dress in a way that is not typically associated with either gender. This may be because they identify as non-binary or prefer to dress in a gender neutral way, but appropriate for their work environment.

## **4. Use of facilities**

- 4.1. Where possible, the Council will aim to have gender neutral facilities in addition to existing single sex facilities; however this may not always be possible. Gender neutral facilities can be used by anyone.

A transgender employee should be granted access to 'men only' or 'women only' facilities according to the gender in which they present. Under no circumstances should they be expected, after transitioning, to use the facilities of their former gender, a unisex toilet, or an accessible toilet.

- 4.2. Where gender neutral facilities are available, individuals who identify as gender fluid or non binary may prefer to use these. Where gender neutral facilities are not available, the individual may discuss this with their line manager and Trade Union Representative (where applicable), who should seek advice from Human Resources.

## 5. Recruitment & appointment

5.1. The Council prides itself on being able to recruit and retain skilled staff with values that reflect the communities we serve. This includes ensuring that transgender and non binary individuals are welcomed and respected.

### Interviews

5.2. Interviewees may not wish to disclose their gender identity at interview, and it is not a question that should be asked. However, if an exception applies (see section 8 for more details), an individual would be expected to disclose their transgender status and an interviewer would therefore be able to ask an appropriate question. The exceptions will not apply if the individual has obtained a GRC.

### Employment checks

5.3. On joining the Council, some transgender individuals may not have any identification documents, qualification certificates etc. in their correct gender, and so may have to disclose their previous identity. We must ensure that this information is kept confidential.

5.4. Reference requests for a transgender person must be provided without any hint or reference to the fact that the person has had a change of gender i.e. transitioned. If we have to keep evidence of professional status or qualification, we should discuss this with the individual concerned i.e. 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.

5.5. The Disclosure Barring Service (DBS) has a dedicated phone number for Transgender people to ring which is currently 0151 676 1452 or email [sensitive@db.s.gsi.gov.uk](mailto:sensitive@db.s.gsi.gov.uk) . Disclosures sent to the employee and their employer 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 transgender person, allowing them time to change their details on the PNC. They will then issue the certificate with all names the same.

## 6. How we will handle your data

- 6.1. Many transgender individuals wish to keep their status / gender history private, whilst others are willing to discuss it confidentially or even openly. There is no obligation on a transgender person to disclose their status as a condition of employment.
- 6.2. For the purposes of Data Protection legislation (General Data Protection Regulation 2018 (and as amended), gender reassignment (transition) and any information pertaining to an individual's gender history would constitute 'sensitive data' which can only be processed for certain specified reasons, as set out in the Regulation.
- 6.3. It is important to be aware that anyone, including a manager, who acquires information about someone's transgender status is liable to criminal proceedings if they pass that information to a third party without the permission of the individual. This would include, for example, the individual's colleagues, Human Resources staff or another manager.
- 6.4. 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.

### **Documentary evidence/proof**

- 6.5. Transgender people should not be made to obtain, nor made to feel that they should obtain, a Gender Recognition Certificate (GRC).
- 6.6. If a person chooses to obtain a GRC, they can obtain a new birth certificate showing their acquired gender. An employer should be able to use the birth certificate for most administrative requirements relating to employment, in the same way that they would for other employees. It is unlawful to request the GRC, if they have their new birth certificate. When someone obtains a GRC, their employment records must be changed to reflect their expressed gender. However, it is the responsibility of the employee to provide updated documentation for any other purpose e.g. qualification certificates. Appropriate standards of confidentiality should be maintained as with all HR documents.

6.7. If a person does not have a GRC, suitable evidence to account for the transition and name change should be presented to the relevant HR contact. This should include:

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

However, no official evidence is required for an individual to request that their email address or work ID badge are amended to their chosen name, and pronouns.

6.8. On receiving this information, the Council will ensure that all documents, public references and employment details reflect the acquired gender of the person. This will prevent any breach of confidentiality.

6.9. 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.

6.10. To maintain confidentiality, new records must be produced that makes no reference to the employee's old identity; for example where there are manual records, 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. Where old information needs to be retained, how it will be stored and kept confidential should be discussed with the employee. For example, evidence of professional status and qualifications may have been issued in the employee's previous name.

It may be necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes where these differ to the legal sex, for people **without** a GRC.

People with a GRC are of that gender for **all** purposes, including Pensions and Insurance. Any such records must be kept securely, and clearly marked as only to be looked at by named persons.

## 7. Pensions

- 7.1. For pension issues related to your gender status you should seek advice from Human Resources by contacting either Kate Enver or Lorraine Sanders.
- 7.2. Individual should be treated as a member of their acquired gender from the date of transition.
- 7.3. A transgender person who 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.
- 7.4. Transgender people 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. A transgender woman without a full Gender Recognition Certificate who is working beyond the age of sixty is able to make separate arrangements for the payment of national insurance contributions so as to retain her privacy in the workplace.

## **8. Considerations and exceptions**

- 8.1. An individual who is transitioning may wish to be relocated during the transition period if, for example, their working environment is stressful. Relocation may not always be appropriate or feasible and any decision should always be made in consultation with the individual, with advice from Human Resources. Some employees may prefer to stay within the environment they are familiar with and be supported there.
- 8.2. There are some limited temporary exceptions which apply during the process of gender reassignment only. For example, if a post requires the holder to provide individuals with personal services, and the role is considered as being a single sex role in accordance with the provisions of the Equality Act 2010, 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. This exemption would not, however, apply to someone with a full Gender Recognition Certificate.
- 8.3. If an employee 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 must be carried out and the employee may be considered for redeployment. Every effort would be made to find suitable alternative employment, in line with the Council's process for redeployees.
- 8.4. It is important for managers to treat each case on its unique circumstances and seek further advice from Human Resources where appropriate.

## **9. Version and review**

This guidance document will be subject to regular reviews by Human Resources in consultation with other appropriate stakeholders, to ensure the guidance is up-to-date and relevant with reference to other organisational policies, changes in legislation, best practice or appropriate guidance and any other relevant internal or external reference points. Where there are issues with the way the guidance is working, these will be examined to identify measures to improve its effectiveness.

## 10. Appendices

### Appendix 1

#### 1. What the Law says

**1.1. 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 of reassigning the person's sex by changing physiological, or other attributes of sex.

You should only identify a person's transsexual status if you have permission to do so. 'Outing' a person as a transsexual is classed as direct discrimination under the Act and could result in criminal charges under the Gender Recognition Act 2004. Disclosure of the fact that an employee has obtained a gender recognition certificate is a criminal act subject to a fine.

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

Please note that the term transsexual is no longer regarded as socially acceptable and it is recommended that you only refer to someone as transsexual if they tell you that's how they identify; otherwise the term Transgender person or Trans is best used.

**1.2. 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.

- 1.3. **Public sector duty regarding socio-economic inequalities** - there is a requirement of public bodies to comply with a general duty to proactively promote gender equality.

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 where it would be reasonable to allow a similar amount of time off work.

## Appendix 2

### Explanation of terms

(These explanations may vary based on legal/social change or may be unique to certain circumstances)

**Polygender** – is a gender identity which can be translated as ‘many genders’. Polygender people experience multiple gender identities either simultaneously or varying between them.

**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.

**Agender** – an unspecified or absence of established falling outside binary notions. Agender people may present in a variety of ways as neutral, feminine, masculine, or any combination of the above. Agender people can have a preference for pronouns, although some prefer to avoid using gendered language about themselves.

**Cisgender or Cis** – Someone whose gender identity is the same as the sex they were assigned at birth. For example, someone who identifies as a woman and was assigned female at birth is a cisgender woman.

**Cross Dresser** – A person — typically a straight-identified, cisgender man — who sometimes wears clothing associated with the opposite sex in order to have fun, entertain, gain emotional satisfaction, for sexual enjoyment, or to make a political statement about gender roles.

**Dead Naming** – Calling a Transgender person by their former name. This can be accidental in which case, a simple apology and using their correct name is acceptable. Deliberate Dead Naming is offensive and can cause distress to individuals.

**Drag king** – A female performer who exaggerates male behaviours and dress for the purposes of entertainment at bars, clubs, or events. Some drag kings might identify as transgender.

**Drag queen** – A male performer who exaggerates female behaviours and dress for the purposes of entertainment at bars, clubs, or events. Some drag queens might identify as transgender.

**Femme** – Presenting traditionally feminine characteristics/dress.

**Gender** - A persons perceived sociological status as either a man or a woman, and an individuals own psychological sense of self as either a man or a woman. The terms ‘masculine’ and ‘feminine’ are gendered terms connoting these categories.



**Gender pronoun** – A gender neutral or gender inclusive pronoun is a pronoun which does not associate a gender with the individual who is being discussed. Sharing one's pronouns and asking for others' when making introductions is a growing area.

**Gender Identity** - A person's sense of self as a man, woman, non binary person or other sense of gender. A person's gender identity can follow directly from the sex they were assigned at birth, but this is not always the case (Government Equalities Office 2015).

**Gender Fluid / Genderqueer / non binary / androgyne** - applies to a person whose gender identity changes over time. Some people regard queer as offensive, others embrace it.

**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. Under the Equality Act 2010 Gender reassignment is a protected characteristic. Medical treatment is not necessary in order to be protected against discrimination by the Act.

**Gender Recognition Certificate** – The Gender recognition Act (2004) allows trans people over 18 to change their legal identity as male or female. The Act gives trans people the right to obtain a Gender recognition Certificate so they can get a new birth certificate in their acquired gender. This gives them recognition of their acquired sex in law for all purposes, including marriage.

**Gender Binary** – the classification of sex and gender into two distinct and disconnected forms of masculine and feminine

**Gender Dysphoria** – Gender dysphoria is a condition where a person experiences discomfort or distress because there's a mismatch between their biological sex and gender identity. This term replaces the diagnostic name, gender identity disorder, as this was deemed to have a stigmatising effect.

**Gender Incongruence** – as above with the exception that the individual does not experience significant distress or impairment.

**Inter-Sex** - An intersex person is someone who doesn't fit the typical definition of male or female, as they may have variations in their chromosomes, gonads, sex hormones or genitals. Intersex is an umbrella term used to describe a wide range of natural bodily variations. Whilst intersex people are not explicitly protected from discrimination by the Equality Act, they must not be discriminated against because of their gender or perceived gender, and should this occur, protection is available under the sex discrimination or disability discrimination.

**Masc** – Presenting traditionally masculine characteristics/dress.

**Non-binary person** – is a person who does not identify as solely male or female. They may identify as both, neither or something entirely different

**Personal pronouns** - Personal pronouns are the words that we use to describe each other in place of someone's name. Pronouns are usually used according to someone's gender e.g. he, his or him for males and she or her for females. Some people may prefer to be addressed by gender-neutral pronouns such as 'they', 'ze' or 'thon.'

**Presenting** – the manner of dress and social identity assumed by a person. This may equate with traditionally perceived roles yet also may both vary and incorporate emergent perspectives of gender identity.

**“Trans”** - An umbrella term for those who do not conform to normative ideas and categories of sex and/or gender and can include Transsexual, Transgender, Transvestite/Cross dresser, asexual, pansexual, genderqueer, non-binary, androgyne, neutrois and bigender individuals.

**Transphobia** - This term is used to describe antagonistic attitudes and feelings towards transgender people. It is a form of prejudice and discrimination. Transphobic behaviour, as with any discriminatory behaviour, has no place in Southwark and will not be tolerated.

**Transgender** - a term applied to individuals who have a gender identity or gender expression that differs from their assigned sex. Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual. It is recommended that you only refer to someone as transsexual if they tell you that's how they identify; otherwise the term Transgender person or Trans is best used. The word transgender should be used as an adjective, never a noun, that is, an individual is transgender, rather than an individual is a transgender. Additionally, the term 'transgendered' is not suitable.

Transgender, often shortened to Trans is an umbrella term in addition to including people whose gender identity is the opposite of their assigned sex (transgender men and transgender woman), it may include people who are not exclusively male or female (people who are non-binary or gender queer) and crossdressers. Further information on these terms as follows:

- **Transgender 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.
- **Transgender 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.

- **Gender Fluid / Genderqueer** / non-binary / androgyne - Relates to individuals who do not identify themselves as having a fixed gender. It is a gender identity which refers to a gender which varies over time.
- **Cross Dresser** – A person who as a form of self expression sometimes wears clothing associated with the opposite sex; usually a heterosexual cisgender male.

**Transition** - This describes the journey that someone takes from living in their assigned gender to living and presenting as the gender they identify with. 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. The exact steps involved in transition will vary from person to person.

**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.