

EMPLOYMENT MATTERS COMMITTEE

9 SEPTEMBER 2015

GENDER REASSIGNMENT POLICY

Report from: Tricia Palmer, Assistant Director, Organisational Services

Author: Carrie Mckenzie, Head of HR and Organisational Change

Summary

The report seeks agreement to the introduction of a Gender Reassignment Policy

1. Budget and Policy Framework

1.1 The Policy lies within the Council's policy and budget framework and the Committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

2. Background

2.1 The council is committed to creating an inclusive workplace where all employees feel comfortable to be themselves at work without fear of discrimination and where barriers that prevent people from feeling ill at ease and respected are removed.

2.2 This policy and supporting guidance has been produced to support colleagues who are making the transition to a new gender identity. Transgender people are protected under the Equality Act 2010 as having one of the nine 'protected characteristics'. This policy will help to ensure that the council, as an employer, acts in accordance with its obligations under the Act.

2.3 The council has, since 2011, committed to supporting Lesbian, Gay, Bisexual and Trans (LGBT) people through the LGBTQ forum as well as through the council's equality policy known as the *Fair Access and Inclusion Policy*.

2.4 The council strives to show its commitment to being a gay-friendly employer through its annual participation in the Stonewall Workplace Equality Index Top 100 benchmarking exercise. This spans both public and private sector and the council has in recent years been on the cusp of being one of the Top 100 most gay-friendly employers in the UK.

- 2.5 From 2016 Stonewall, recognising that employers can have a huge impact upon the lives of their trans staff and the wider trans community have included transgender people in this benchmarking exercise. Previously the charity focused on Lesbian, Gay and Bi-sexual people. From 2017 the council will need to provide evidence that transgender people, in the same way as other LG&B people, are recognised and supported formally in the employment arena through policy and practice.

3. Advice and analysis

- 3.1 The introduction of this policy will benefit both the council and employees in a number of ways. These are highlighted below:

3.1.2 Benefits for the employer:

- Reduce the risk of discrimination claims by ensuring all those who deal with the transgender process, (including those who deal with recruitment) are aware of their responsibilities under the Equality Act 2010 and the Data Protection Act 1998.
- Dispel myths about gender reassignment and in doing so reduce the risk of indirect discrimination.
- Assist Medway Council in being an *Employer of Choice* where prospective job applicants recognise Medway as an inclusive employer where people's differences are welcomed and celebrated.
- Clearly sets out responsibilities and principles for staff at all levels on how to support staff that are going through the transgender process.
- From 2017 support our submission for the Stonewall Workplace Equality Index Top 100 Employers.

3.1.3 Benefits for the employee:

Although all transgender individuals have their own set of challenges during the gender-reassignment process and each individual 'journey' may be different, this policy provides a clear framework detailing the support and guidance they can expect from the council as their employer, the main ones being:

- Transitioning individuals will 'lead' the process
- Transitioning individuals will be given a named contact (specifically trained) who will support them through the process
- Through our recruitment procedures transgender people will not be subject to any adverse bias when recruitment decisions are made
- The council will not view transgender treatment as cosmetic or elective and will not subject an employee to a disadvantage for taking time off for gender reassignment
- Time off for gender reassignment will be recorded separately from sickness absence and it will not be used for absence management or monitoring purposes

- The council will be aware that gender identity constitutes sensitive data under the Data Protection Act 1998.

4. Consultation

- 4.1 Consultation on these changes has taken place involving the trade unions and the employee forums using the agreed consultation protocol, between 27 July 2015 and 14 August 2015.
- 4.2 No comments were received from the trade unions, input from the chair of the LGBTQ forum has been incorporated within the guidance document at 1.7.

5. Risk Management

- 5.1 It is important that all eligible staff are made aware of this Policy and their responsibilities within it.
- 5.2 Failing to implement the Policy in a fair and consistent manner may result in successful legal challenges,
- 5.3 Failing to adhere to the Council's responsibilities could pose a legal challenge at employment tribunal.
- 5.4 It is therefore necessary for the new Policy, included at Appendix A to the report, to be shared with future eligible staff within the Council.

6. Diversity Impact Assessment (DIA)

- 6.1 A Diversity Impact screening has been undertaken and it is considered that a full DIA is not required. The DIA is attached at Appendix B to the report.

7. Financial and legal implications

- 7.1 It is not envisaged that there will be any additional financial implications with the implementation of this Policy.
- 7.2 Implementation of this Policy enables the Council to comply with its various statutory obligations. Implementation of the Policy is within the council's powers. In the application of this Policy it is essential that a fair and consistent approach is to be applied to all staff in order to minimise successful legal challenges. The council must ensure that in the application of the policy due regard must be given to all relevant legislation.

8. Recommendations

- 8.1 That the Employment Matters Committee approves the Policy as set out in Appendix A to the report.
- 8.2 That this Policy is reviewed in two years time and any proposed changes are referred to this Committee.

Lead officer contact

Carrie Mckenzie, Head of HR and Organisational Change 01634 332261
Carrie.mckenzie@medway.gov.uk

Background papers

None

Appendices

Appendix A – Gender Reassignment Policy
Appendix B – Diversity Impact Assessment



Medway Council Gender Reassignment Policy September 2015



Table of contents

Section	Page number
1. Introduction	3
2. Equalities Statement	3
3. Core Values and council objectives	3
4. Scope	3
5. Roles and Responsibilities	4
6. Principles	5 - 6
7. Guidance for Line Managers	6
8. Monitoring and Review	6
9. Diversity Impact Assessment	6
10. Relevant Legislation	6 - 7

1.0 Introduction

- 1.1 Medway Council is committed to creating an inclusive workplace. One where all employees are recognised and valued, regardless of their gender identity, and where barriers that prevent people from feeling at ease and respected are removed.
- 1.2 Failing to create an inclusive workplace for transgender men and women creates a risk that the council, as an employer will fail to comply with the law. The Equality Act 2010 protects people from discrimination, harassment and victimisation if they are proposing to undergo, are undergoing, or have undergone a process (or part of a process) of gender reassignment.
- 1.3 Transsexual people are those who decide to adopt the opposite gender to that assigned at birth because they do not feel that their gender identity matches that assigned to them.
- 1.4 Gender identity is about the internal sense of one's gender; Gender reassignment is the process of changing to the new gender identity.
- 1.5 People who live in the opposite gender to that assigned to them at birth are protected by law, however they do not need to be under medical supervision i.e. someone whose birth sex is female, and who is living permanently as a man, but has decided not to undergo any medical treatment, is still protected.
- 1.6 The number of individuals who undergo gender reassignment is relatively small. However, where the situation does arise, the council will ensure that it complies with the applicable law.
- 1.7 This policy, together with the accompanying guidance (attached as appendix one) contains good practice advice which will help to make the transition for the transsexual employee, work colleagues, and our customers as smooth as possible. It will also ensure that colleagues are aware of their responsibilities under the Equality Act 2010.

2.0 Equalities Statement

- 2.1 Medway Council is committed to providing equal opportunities and access to all. This policy statement embraces the spirit of managing a diverse workforce supports the council's stance that no employee is discriminated against either directly or indirectly or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status or any stage of gender reassignment.

3.0 Core Values and council objectives

- 3.1 This policy supports the council's Core Values. The council believes that treating everyone with dignity and respect, and employees being able to come to work without fear of discrimination is fundamental to creating an inclusive workplace and the delivery of quality services to the public.

4.0 Scope

- 4.1 This policy applies to all staff except schools based staff, centrally employed teachers who are covered by the School Teachers Pay and Conditions Document, all staff employed at short stay schools, previously known as Pupil Referral Units.

5.0 Roles and responsibilities

5.1 Employee responsibilities

5.1.1 Employees will:

- treat all colleagues with dignity and respect
- when appropriate, familiarise themselves with the guidance attached as appendix one

5.2 Line manager responsibilities

5.2.1 Line managers will:

- familiarise themselves with the guidance attached as appendix one
- when appropriate arrange training for the employee's colleagues to improve their understanding of transgender issues
- respect the privacy of transgender employees
- when appropriate will ensure that they are fully trained in the council's established procedures in handling sensitive data under the Data Protection Act 1998

5.3 HR Services responsibilities

5.3.1 HR Services will:

- respect the privacy of transgender employees
- communicate a zero-tolerance approach to bullying and harassment on the basis of transgender through its Grievance and Harassment Procedure
- ensure that those making recruitment decisions do not discriminate against transgender applicants/employees
- ensure that transgender issues are included in equality-awareness training to encourage employees to behave appropriately towards transgender men and women
- monitor transgender equality but will take care to protect employee's confidentiality during any monitoring exercise
- ensure that all appropriate staff within HR Services are regularly trained on the established procedures for handling sensitive data under the Data Protection Act 1998
- publicise details of external sources of advice and support for transgender employees
- promote and publicise this policy and accompanying guidance

6.0 Principles

6.1 This policy and accompanying guidance is intended to help the council, transsexual people and other employees deal with any practical issues that may arise as a result of an employee expressing their wish to undergo the gender reassignment process. Compliance with the policy should ensure that employees do not commit unlawful acts of discrimination.

6.2 Transsexuals and gender reassignment – the ‘real life test’

6.2.1 The process of gender reassignment will normally involve a period of at least one year when the transsexual person must live and work in the gender to which he/she is reassigning (the "real life test") and they will also undertake hormone treatment. If the person decides to undergo surgery, this will follow the ‘real life’ test.

6.3 Providing Support

6.3.1 The council will allow the individual who is transitioning to lead the process and will not take any action without the individual’s consent.

6.3.2 The council will appoint a named internal contact to act as a first point of information for employees and line managers on transgender issues. The council will arrange training for this individual to equip them to provide confidential advice to employees.

6.4 Recruitment

6.4.1 The council will take steps to eliminate bias when making recruitment decisions.

6.5 Employment

6.5.1 The council will not take account of an employee's gender identity status or history in making employment decisions except where necessary and permitted by law.

6.6 Bullying and Harassment

6.6.1 The council has a separate Grievance and Harassment policy concerning issues of bullying and harassment on any grounds, and how complaints of this type will be dealt with. Disciplinary action will be taken against employees who bully or harass other employees.

6.7 Dealing with the transition

6.7.1 The council will be supportive of any employee who expresses an intention to undergo gender reassignment and will work with them to try to ensure as smooth a transition at work as possible.

6.8 Time-off

6.8.1 The council does not view transgender treatment as cosmetic or elective and will not subject an employee to a disadvantage for taking time off for gender reassignment. The council will not treat the employee less favourably than they would treat an employee who is taking time off for injury or illness.

6.8.2 Time off for gender reassignment treatment will be recorded separately from sickness absence and it should not be used for absence management or monitoring purposes.

6.9 Confidentiality and privacy

- 6.9.1 Where an employee reveals information about his or her gender identity to the council, the recipient of the information should keep it confidential and should not reveal it to anyone without the individual's consent.
- 6.9.2 A person's gender history constitutes sensitive data under the Data Protection Act 1998, and can be processed only for certain reasons as set out in the Act. The council will use its established procedures on handling sensitive data in relation to individual's gender identity and train employees who are likely to receive such information on these procedures.

7.0 Guidance for line managers

- 7.1 The guidance for managers on how to support employees who are undergoing gender reassignment is attached as appendix one.

8.0 Monitoring and review

- 8.1 The policies for recruitment and selection, pay, training and development, discipline, grievance and harassment and absence management will be regularly monitored and reviewed to ensure they do not discriminate against transgender employees in order for the council to meet its obligations under the Equality Act 2010.

9.0 Diversity Impact Assessment

- 9.1 A Diversity Impact Assessment will be undertaken at each review.

10.0 Relevant legislation

- 10.1 The Equality Act 2010 makes it unlawful to treat someone less favourably than other people in relation to employment or vocational training on grounds that he/she proposes to, starts or has completed a process to change his/her gender. It is not necessary for the individual to be under medical supervision to be protected, so it is sufficient if he/she decides to live as a member of the opposite sex but does not undergo any medical procedures. The protection applies whether or not the individual has a gender recognition certificate. Harassment or bullying on grounds of gender reassignment is unlawful discrimination.
- 10.2 The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for a gender recognition certificate as of April 2005. When a full gender recognition certificate has been issued, the person is considered in the eyes of the law to be of the acquired gender. There is no obligation on an individual to apply for a gender recognition certificate and there may be good personal reasons, such as an existing marriage, why someone has not applied for one. There are special laws protecting the privacy of someone who has a gender recognition certificate: a person may commit a criminal offence if he/she discloses information about the gender history of someone with a gender recognition certificate without that person's consent.
- 10.3 There are some limited exceptions where it is lawful to prevent someone doing a job on grounds of gender reassignment, for example where not being a transsexual person is an occupational requirement for the job, and the employer can demonstrate that it is a proportionate means of achieving a legitimate aim. The exceptions do not apply to someone with a gender recognition certificate.

- 10.4 It is unlawful to victimise someone because he/she has supported a complaint or raised a grievance under the Equality Act 2010, or because he or she is suspected of doing so.
- 10.5 An employee who discriminates against another employee on grounds of gender reassignment may be held liable for unlawful discrimination and be required to pay compensation as well as, or instead of, the organisation.

Subject/Title	
Date agreed by Employment Matters Committee:	
Team responsible for policy	Employee Engagement Team
Date of Review:	
Toolkit updated by:	n/a

Gender reassignment – supporting our transgender colleagues

Guidance for managers

September 2015

Produced in conjunction with the Medway Council LGBTQ forum



Contents

Section	Page Number
1. Background and Review	3 - 4
2. Guidance for Managers	5 - 10
Terminology	Appendix 1
Useful Contacts	Appendix 2
Recruitment	Appendix 3

1.0 Background and overview

1.1 The council is committed to create a culture where transgender men and women are treated with respect and this commitment is reflected in all employment policies. This guidance supports the Gender Reassignment Policy (September 2015)

1.2 There is no requirement for a transgender person to inform their employer of their gender-identity history. Therefore, by virtue of the Gender Reassignment Policy and this guidance, measures will be put in place to create an inclusive workplace for transgender employees, whether or not it is known whether there are transgender employees in the workforce.

1.3 The importance of creating an inclusive workplace

1.4 An inclusive workplace is one where all employees are recognised and valued, regardless of their gender identity, and where barriers that prevent people from feeling at ease and respected are removed. When employees feel respected and valued they are more likely to be productive and motivated. Further, respecting transgender people for what they can do rather than who they are can have a positive effect on retention, because it is likely to engender a sense of loyalty to the organisation.

1.5 Failing to create an inclusive workplace for transgender men and women creates a risk that the council, as an employer will fail to comply with the law. The Equality Act 2010 protects people from discrimination, harassment and victimisation if they are proposing to undergo, are undergoing, or have undergone a process (or part of a process) of gender reassignment. People who live in the opposite gender to that assigned to them at birth are protected, and they do not need to be under medical supervision i.e., someone whose birth sex is female, and who is living permanently as a man, but has decided not to undergo any medical treatment, is protected.

1.6 This guidance explores the key steps that managers should take to ensure that transgender employees feel supported at work.

1.7 This guidance has been produced with the full support of the LGBTQ forum. Sallyann Baxter, Chair of the forum explains:

“Change often creates anxiety around the unknown and as with all change; gender transitions affect many people – the individual transitioning, supervisors, peers, clients, and even those with incidental affiliation such as working in the same location or practice area. If you oversee, manage, or lead an employee who is transitioning, it is important that you demonstrate an understanding, and use a sensitive approach to their needs and concerns. It may be frightening to the transitioning individual to make himself or herself vulnerable to a person upon whom their job depends. Make it clear to them that your conversations will be held in confidence. The LGBTQ Forum can support both the transitioning person and staff in putting together a plan for transitioning at work.”

lgbtqforum@medway.gov.uk

1.8 Terminology

1.9 Understanding the terminology relating to gender identity is the first step to creating an inclusive workplace for transgender people. The inappropriate use of language can cause offence and distress to employees and undermine the council's efforts to support transgender men and women. Appendix one gives details of some of the terms of which managers and colleagues should be aware.

1.10 The difference between gender identity and sexual orientation

1.11 Gender identity and sexual orientation are not interchangeable terms. Gender identity is about the internal sense of one's gender. Sexual orientation is about a person's preference for sexual partners and encompasses attraction towards persons of the same sex, persons of the opposite sex, and persons of both sexes. Transgender people can be bisexual, gay, heterosexual or lesbian, and it should not be assumed that a transgender man or woman has a particular sexual orientation. Some trans people's sexual orientation will change as they transition.

1.12 The transgender population in the UK

1.13 The Gender Identity, Research and Education Society (GIREs) has identified that the median age for transitioning is 42, although the number of young people who are presenting for gender reassignment treatment is increasing.

1.14 Many workplaces have employees who experience some degree of gender variance. Further, employees may have transgender family members or friends and it is highly likely that the council will have transgender men and women service users or clients who expect fair treatment and respect. In 2011, GIREs suggested that organisations should assume that around one per cent of their employees and service users experience some degree of gender variance.

1.15 Problems experienced by transgender employees

1.16 In 2011, the Government Equalities Office carried out a series of online surveys to identify key areas of concern for transgender people. After health, respondents identified employment as the most significant area of concern, with around one-third of respondents naming it as their priority. Difficulty in gaining and retaining employment were considered to be the biggest challenges for trans people in relation to employment. Other reported problems included:

- a lack of awareness among employers and employees about transgender issues;
- discrimination and harassment and a lack of effective procedures to address unfair treatment;
- an absence of effective employment policies to support transgender equality; and
- inadequate privacy and confidentiality arrangements.

1.17 In addition, a lack of activity to support transgender people can result in employees who wish to be open about their gender identity, or who are experiencing discrimination, feeling excluded from the workplace and unable to raise problems, and deciding to resign.

2.0 Guidance for managers

2.1 Managers are not expected to be experts on transgender issues. There are organisations (list of contacts attached as appendix two) that provide information, advice and training to employers and their employees. This guidance is the first step to for managers to support an employee who is transitioning and their colleagues.

2.2 Confidentiality and the Data Protection Act 1998

2.3 Managers should be aware that it is an individual's decision whether or not to reveal his or her gender identity to their employer. Disclosure of gender identity should not be a requirement of employment, and no one should ask an individual about his or her gender identity, whether during an interview or during the course of the employee's employment. Further guidance relating to recruitment is attached as appendix three.

2.4 Some individuals prefer to keep their gender identity private, while others may choose to discuss it with a few colleagues in confidence or be more open about it.

2.5 Where an employee reveals information about his or her gender identity either to their manager or another colleague the recipient of the information should keep it confidential and should not reveal it to anyone without the individual's consent. This includes information provided to the line manager when an employee is transitioning (see *Supporting an employee who is transitioning para 2.10*).

2.6 A person's gender history constitutes sensitive data under the Data Protection Act 1998, and can be processed only for certain reasons as set out in the Act. Unless one of the limited exceptions applies, it is a criminal offence for anyone in an official capacity, which includes the individual's employer, to disclose information relating to an application under the Gender Recognition Act 2004, including the individual's gender-identity history.

2.7 To ensure that employees with information about an employee's gender identity keep the information confidential, the council's established procedures on handling sensitive data must be adhered to. Contact HR if you are in any doubt (hradvice@medway.gov.uk).

2.8 If you believe that an employee is a transgender man or woman, but the individual has not disclosed this information, you should respect the individual's choice. However, you should still support the individual.

2.9 Supporting an employee who is transitioning

2.10 A decision to transition is not taken lightly and usually follows many years of stress, anxiety and isolation for the individual.

2.11 In its 2010 triennial review, "How fair is Britain?", the Equality and Human Rights Commission reported that transitioning is one of the most significant trigger points for discrimination against transgender people at work. This guidance should help to ensure that individuals who are transitioning are fully supported with the council fully meeting its obligations within the law.

2.12 It should be recognised that it is the individual who is transitioning who will lead the process, and managers should not take any action without the individual's consent. Effective support for someone who is transitioning stems from dialogue with the individual and respect for the individual's circumstances.

2.13 Confidential advice and support is available to both managers and individuals through the council's support mechanisms. These include:

- the LGBTQ forum (see para 1.7)
- Care-first, employee assistance provider 24/7, 365 days per week call 0800 174319 <http://just4you.medway.gov.uk/hr/a-zofhrinformation/carefirstcounsellingservice.aspx>
- Occupational Health (contact hradvice@medway.gov.uk in the first instance)
- Industrial chaplaincy - <http://just4you.medway.gov.uk/support/chaplaincy.aspx>
- Trade unions - <http://just4you.medway.gov.uk/hr/a-zofhrinformation/tradeunions.aspx>



2.14 The Lesbian, Gay, Bi-Sexual, Trans and Questioning Forum (LGBTQ)

2.15 Confidential support is available to individuals through the LGBTQ Forum. Although there are significant differences between sexual orientation and gender identity with regards to policy issues and the law, employees may have similar experiences of discrimination and harassment that can provide a common ground for action.

2.16 The LGBTQ forum can provide a means of mutual support for employees who are under represented in the workplace. They act as a source of information for the council on how to tackle discrimination.

2.17 To contact the LGBTQ forum email lgbtforum@medway.gov.uk or visit the LGBTQ web pages on Just4you at: <http://just4you.medway.gov.uk/support/staffforums/lgbtforum.aspx>

2.18 Creating the confidential action plan

2.19 Upon being told that an individual wishes to change their identity, the line manager should contact HR Services in the first instance and ask for the HR contact trained in handling transgender reassignment processes.

2.20 In agreement with the individual a suitable manager (preferably the line manager or other person, e.g. an HR representative) will be appointed to be the main point of contact for the individual and the contact and employee will agree a confidential plan of action. This will detail how the employee will be supported through the transitioning process.

2.21 The action plan should consider a number of key issues. These are detailed in para's 2.23 to 2.53. The plan will include the date from which the person will be known by his or her new name. It should be born in mind that transitioning is a process that does not happen overnight.

2.23 Redeployment

2.24 An employee who is transitioning may wish to be redeployed on a temporary or permanent basis. The employee may wish to avoid having to answer questions from the public about his or her gender if he or she is in a customer-facing role. There may be some duties, for example heavy lifting, that will be difficult for the employee to undertake if he or she is undergoing medical treatment. Where possible, the council should try to accommodate the employee's wishes.

2.25 However, pressure should not be put on the individual to change jobs temporarily or make assumptions about his or her capability or wishes. For example, a manager should not remove a trans employee from a customer-facing role because they are concerned that the individual will not be accepted or will be subject to abuse. However, if, for example, the employee requests a temporary move to a back-office role while he or she transitions, this should be agreed wherever possible.

2.26 Informing colleagues

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

2.28 Some employees will wish to tell colleagues about their gender reassignment themselves, but others may find it less stressful if the manager does so on their behalf, having agreed with the employee in advance what to say.

2.29 There are different ways to go about informing the team. For example, a team meeting will give people the chance to ask questions. If the manager is informing people at a team meeting, the employee may offer to join the meeting to answer colleagues' questions. If so, the manager should ensure that questioning does not become intrusive or abusive. Alternatively the employer could issue a statement and provide a mechanism for individuals to raise any concerns. Either way the wishes of the employee should be paramount.

2.30 Informing third parties

2.31 Where an employee has a client-facing role, the manager should have a discussion with him or her about informing clients about the gender reassignment. For example, they could agree a short factual statement about the individual's transition and new name, which the manager could issue to clients, or the employee might wish to inform clients him- or herself over the telephone.

2.32 It might be appropriate for the employer to explain to the employee's colleagues how they should respond if a client or another third party, for example a supplier, has a query about the employee's gender reassignment.

2.33 Training for employee's colleagues

2.34 To minimise the risk of harassment, the manager should arrange training for the employee's colleagues, to improve their understanding of transgender issues. This can also help to prevent a situation where the employee's colleagues avoid contact with him or her because they do not want to say the wrong thing. Managers should contact HR Advice in the first instance to discuss.

2.35 Time off for treatment

2.36 The length of time a person takes to complete his or her gender reassignment will depend on the individual's circumstances, including the type of medical treatment the employee is having. For example, the employee:

- may have hormone therapy for a number of years before having surgery;
- may need to have a number of operations; may decide not to have surgery; or
- may take breaks from his or her treatment.

The period of time taken to complete gender reassignment will also depend on where the employee is having treatment, because waiting times for reconstruction surgery vary across the country, and the individual may need to travel some distance for treatment.

2.37 Gender reassignment treatment should not be considered as cosmetic or elective and as such will not subject an employee to a disadvantage for taking time off for gender reassignment, and will not treat the employee less favourably than they would treat an employee who is taking time off for injury or illness.

2.38 Managers should record time off for gender reassignment treatment separately from sickness absence and it should not be used for absence management or monitoring purposes.

2.39 The manager and employee should discuss in advance how much time off the employee is likely to need to undergo gender reassignment treatment, although the employer should allow some flexibility. This will allow you, as manager time to plan for the absence and arrange cover for the employee if necessary.

2.40 In some cases, the employee will want to take leave and return to work in his or her acquired gender on return. This can give the manager time to make any necessary arrangements, for example changing the employee's records.

2.41 Managers should contact hradvice@medway.gov.uk if they are unsure of how to record any absence related to gender reassignment.

2.42 Changing employee records

2.43 Transgender people do not need to have a gender recognition certificate (GRC) for the employer to change their employment records. The employee's records should change from the point that he or she starts his or her transition. Information that needs to be changed includes the employee's name and title.

2.44 The action plan agreed by the manager and employee should consider what records the council needs to change. These are likely to include staff email directories and accounts, security passes etc.

2.45 Arrangements should be made with payroll for the employee to receive a new employee reference number to avoid the current number being used to track his or her previous identity.

2.46 All records that indicate the person's previous gender identity should be destroyed unless there is a specific reason for retaining them.

2.47 Where someone does not have a GRC, some of his or her records, for example their pension will continue to show the employee's gender at birth. These records must be treated as sensitive information. Access should be restricted to named individuals who need to know for a specific purpose, for example a person who authorises payments into a pension scheme, and the information should not be passed on without the individual's consent.

2.48 Toilets and changing facilities

2.49 The employee has a right to be able to use the toilet and changing facilities appropriate to his or her acquired gender from the point that the individual declares that he or she is living and working in that gender.

2.50 Dress codes and uniforms

2.51 Flexibility should be shown to employees regarding dress codes during transitioning.

2.52 Where employees are required to wear a uniform, the manager will arrange for a uniform for the appropriate gender to be available from the moment a person starts working in his or her acquired gender. The transition plan should build in sufficient time for ordering a new uniform.

2.53 Training on gender identity

2.54 Managers should consider giving training to the colleagues of an employee who is transitioning. This should be provided only with the agreement of the individual. The individual who is undergoing gender reassignment should not be expected to deliver the training to his or her colleagues.

2.55 Any training must be agreed with HR Services in the first instance as those who are delivering the training must be well informed, and sufficiently knowledgeable to respond to any concerns raised.

2.56 Recruitment

2.57 The council will take steps to eliminate bias when making recruitment decisions. More detailed guidance relating to recruitment is attached as appendix three.

2.58 Bullying and harassment

2.59 Background

2.60 Many transgender people experience harassment at work. One study, "Engendered penalties: transgender and transsexual people's experiences of inequality and discrimination", reported that "nearly 29% of respondents experienced verbal harassment (comments) at work and some also experienced verbal abuse (name calling) and threatening behaviour or physical abuse". Bullying and harassment related to gender reassignment can take many forms. For example, refusing to use the pronoun appropriate to someone's acquired gender (for example, calling a trans woman "he"), persistently calling someone by his or her previous name, ostracising a colleague who has transitioned and displaying transphobic images and literature, are likely to amount to harassment.

2.61 The fear or experience of transphobic bullying and harassment is one of the most significant barriers to achieving transgender equality in the workplace. Where an employee experiences harassment, his or her dignity will have been compromised, or the working environment will have become intimidating, hostile, degrading, humiliating or offensive for him or her. If harassment is unchallenged by the employer, this can be seen as legitimising it, and can result in the employee losing trust in the employer. Further, an employer that fails to protect a transgender employee from harassment can be liable and may be ordered to pay unlimited compensation to the employee.

2.62 Harassment often arises because of a lack of awareness about transgender issues. The council's Grievance and Harassment Policy explains what constitutes unacceptable behaviour, and state that employees have a responsibility to treat their colleagues with respect and dignity.

2.63 To minimise the risk of harassment by a third party, for example a customer, service user or supplier, the manager should make clear to third parties that it expects all of its employees to be treated with respect, for example by giving them a copy of its equal opportunities policy and by putting up posters/signs explaining the council's stance on harassment in areas accessible by the public.

2.64 If a third party objects to dealing with a transgender person because of his or her gender identity, the council's response should be consistent with how it would respond if a third party objected to dealing with an employee because of a different protected characteristic, for example religion. The manager could have a conversation with the employee and take into account his or her wishes as to how to respond to the third party. This could include explaining to the third party that the council does not discriminate against employees on the basis of transgender and expects all employees to be treated with respect. Any further action that the council takes should not disadvantage the employee, for example the employer should not suggest moving the employee to a different department.

Terminology

Gender dysphoria: This is a condition where the individual feels that he or she is "trapped" in a body of the wrong sex, causing him or her anxiety and discomfort.

Gender expression: An individual's gender expression is how that person expresses his or her identity to others, for example through dress, mannerisms, behaviour, voice and hairstyle.

Gender identity: This refers to the gender that an individual feels that he or she should be; it is the individual's internal perspective.

Gender recognition certificate (GRC): This is provided to an individual who has made a successful application under the Gender Recognition Act 2004 to the Gender Recognition Panel. The individual must show that he or she has lived in his or her acquired gender for two or more years and intends to do so permanently, and he or she must have been assessed as having gender dysphoria. A GRC gives an individual legal recognition in his or her acquired gender, giving that person the rights and responsibilities belonging to someone of that gender. The individual will be able to obtain a new birth certificate (if his or her birth was registered in the UK).

Not all transsexual people have a GRC or intend to apply for one. One of the key reasons for this is that, if someone is married or in a civil partnership, he or she needs to divorce his or her spouse or dissolve the civil partnership before being able to obtain a GRC, because the law prohibits same-sex marriages and civil partnerships between people of the opposite sex.

Employers should recognise that many individuals who transition simply want to be described as a woman or a man, and regard being a transsexual as part of their gender-identity history.

Intersex: An intersex person is born with ambiguous genitalia and/or sex chromosomal variations, which can make it difficult to classify his or her biological sex.

Passing: This is when a transsexual person is seen by other people as being in the gender with which he or she self identifies. For example, a trans woman "passes" when she is seen by others as a woman, not as someone whose gender at birth was male.

Real life experience: This refers to the period of time that a person must live and work in his or her acquired gender before he or she will be given medical treatment through the NHS. In most cases, this period is between one and two years.

Transgender (or trans): This is an umbrella term describing people who feel the need to present themselves in a gender that differs from the one that they were assigned at birth. It can encompass individuals who are transsexual, transvestite (or cross-dressers) or intersex. Employers should use the term as an adjective, rather than as a noun.

Transsexual: A transsexual person has a deeply held belief that his or her gender identity does not accord with the gender that was assigned to him or her at birth. A transsexual person is likely to undergo hormone therapy and/or surgery to change his or her body to reflect his or her inner gender identity. The process of moving permanently from living in one gender to living in the other is known as "transitioning" or "gender reassignment".

Trans man: This describes a person who was labelled female at birth but has a male identity and transitions to live permanently as a male.

Trans woman: This describes a person who was labelled male at birth but has a female identity and transitions to live permanently as a female.

Transvestite (or cross-dresser): This describes someone who chooses, some of the time, to wear clothes associated with the opposite gender to the one that he or she was assigned at birth. Many cross-dressers are comfortable with their birth gender and do not intend to live permanently in the opposite gender. However, according to a report commissioned by the Equalities Review, many trans women spend a significant period as a cross-dresser before they decide to transition.

Useful contacts

- **The Beaumont Society** This is a national self-help body run by and for transgender people. Its website provides links to a range of information and advice resources. www.beaumontsociety.org.uk
- **Consortium of lesbian, gay, bisexual and transgendered voluntary and community organisations** This is a national specialist infrastructure and membership organisation focusing on the development and support of lesbian, gay, bisexual and transgender groups, organisations and projects. www.lgbtconsortium.org.uk
- **Equality and Human Rights Commission** This provides guidance on the Equality Act 2010 and has a range of research reports relating to transgender issues. www.equalityhumanrights.com
- **Gender Identity Research and Education Society (GIRES)** seeks to improve the circumstances in which trans people live by changing the way society treats them. It provides advice to policy makers, acts as a consultancy service and provides training, promotes research and develops good practice guidelines and literature on gender identity. www.gires.org.uk
- **The Gender Trust** This provides advice, information and support on gender identity issues to individuals and employers. <http://gendertrust.org.uk>
- **Government Equalities Office** This has responsibility across the Government for equality strategy and legislation. www.gov.uk/government/policies/equality
- **Press for Change** is a political, lobbying and educational organisation, which campaigns to achieve equal rights for trans people. Its website is a useful source of information on the law and research into trans issues. Its TransEquality project provides professional legal support to trans people in key areas of the law, and advice to businesses and non-profit organisations. www.pfc.org.uk

Recruitment

The council will take steps to eliminate bias when making recruitment decisions:

Occupational requirement

The Equality Act 2010 says that employers may, in specific circumstances, require a jobholder not to be a transsexual person.

An employer that is applying such a requirement should consider whether or not the occupational requirement applies to all of the duties of the jobholder, or if the duties form a major part of the role. It might, for example, be reasonable for another employee to perform the aspects of the role to which the occupational requirement applies if they are only a minor part of the role.

If there is an occupational requirement for the role, this should be stated in the job advertisement, so that potential applicants are aware of it.

Advertising

A general reference in an advertisement to being an "equal opportunities employer" may not be sufficient to demonstrate to transgender candidates that the organisation welcomes their application.

Interviews

During job interviews those on the recruitment panel should not ask applicants about their gender identity even if they think that a candidate may be transgender. Questions about gender identity may create the impression that the council does not welcome transgender employees.

Job applicants are under no obligation to disclose their gender identity, but if an individual chooses to mention this during the interview, the interviewer should simply acknowledge it and move on. The information should have no bearing on the conduct and outcome of the interview and should not be revealed outside the interview without the explicit consent of the individual concerned.

Qualifications

Those undertaking recruitment activity should take care where they request sight of a candidate's educational qualifications. Although examining boards should change the name on an individual's certificates on transition, this may not be possible if the board or the type of qualification no longer exists. Some examining boards simply refuse to change the name on a certificate.

If an individual shows a certificate with a different name on it to the one used in his or her application, the candidate should be asked to confirm that the certificate belongs to him or her. The individual should be assured that his or her response will be treated as confidential and that the individual's gender-identity history will have no bearing on his or her application.

Proof of identity

Candidates will be asked to produce proof of identity to live and work in the UK at interview stage. However, this is not mandatory and a candidate may choose not to provide this at interview and will not be asked the reason why. Any offer of appointment will be subject to proof for eligibility to live and work in the UK.

Proof of identity

Documents other than a birth certificate are permissible (for example, a passport or work visa). This will allow people whose birth certificate is in the gender assigned to them at birth to provide identification without revealing their gender-identity history. The individual must not be asked if he or she has a gender recognition certificate and, in any case, not all trans people will apply for one. People can change their name and title at any time without special permission, simply by deciding to use a new name, although a more formal process is required to change some documents.

Criminal records certificates

Where a criminal records certificate is required, this may lead a trans applicant to worry and could deter him or her from continuing with the application, because the individual may fear that his or her past gender identity will be revealed.

The Disclosure and Barring Service (DBS) offers a confidential checking process, which gives transgender people the choice as to whether or not their previous gender identity should be disclosed on their certificate. If an applicant decides that he or she does not wish his or her previous identity to be disclosed, the candidate should contact the DBS sensitive applications team, which will advise him or her on what to do. This process does not compromise the robustness of the DBS process.

A trans applicant may feel that it will raise questions if he or she does not complete the form in the usual way. To help allay such fears, the council has included a statement on the application form that gives the contact details of the DBS sensitive applications team: sensitive@dbs.gsi.gov.uk; 0151 676 1452.

References

Where an employee informs a previous employer that he or she has transitioned since working for the organisation, it should protect the individual's privacy by using only his or her new name and gender in any reference.

An applicant is unlikely to give as a reference an employer that would know the individual only by his or her previous name and gender. If this situation arose, it might be appropriate for the prospective employer to contact the individual in confidence for clarification purposes.

Diversity impact assessment

TITLE <i>Name/description of the issue being assessed</i>	Gender Reassignment Policy
DATE <i>Date the DIA is completed</i>	7 August 2015
LEAD OFFICER <i>Name of person responsible for carrying out the DIA.</i>	Carrie Mckenzie Head of HR and Organisational Change

- 1 Summary description of the proposed change**
- *What is the change to policy/service/new project that is being proposed?*
 - *How does it compare with the current situation?*

This policy and supporting guidance has been produced to support colleagues who are making the transition to a new gender identity. Transgender people are protected under the Equality Act 2010 as having one of the nine 'protected characteristics'. This policy will help to ensure that the council, as an employer, acts in accordance with its obligations under the Act.

- 2 Summary of evidence used to support this assessment**
- *Eg: Feedback from consultation, performance information, service user records etc.*
 - *Eg: Comparison of service user profile with Medway Community Profile*

Consultation was invited from the Trade Unions and Staff Forum's between the period 27 July 2015 to 14 August 2015. No comments were received from the Trade Unions, input was received from the Chair of the LGBTQ employee forum and is incorporated at Paragraph 1.7 of the Guidance for Managers document.

Diversity impact assessment

3 What is the likely impact of the proposed change?

Is it likely to :

- Adversely impact on one or more of the protected characteristic groups?
- Advance equality of opportunity for one or more of the protected characteristic groups?
- Foster good relations between people who share a protected characteristic and those who don't?

(insert ✓ in one or more boxes)

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age			X
Disability			X
Gender reassignment		X	
Marriage/civil partnership			X
Pregnancy/maternity			X
Race			X
Religion/belief			X
Sex			X
Sexual orientation			X
Other (eg low income groups)			X

4 Summary of the likely impacts

- Who will be affected?
- How will they be affected?

The policy covers all council employees and gives clear guidance to colleagues in transition about their “rights” and support that the council will provide.

Diversity impact assessment

5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?

- *Are there alternative providers?*
- *What alternative ways can the Council provide the service?*
- *Can demand for services be managed differently?*

Not applicable

6 Action plan

- *Actions to mitigate adverse impact, improve equality of opportunity or foster good relations and/or obtain new evidence*

Action	Lead	Deadline or review date
Not applicable		

Diversity impact assessment

7 Recommendation

The recommendation by the lead officer should be stated below.

This may be:

- to proceed with the change implementing action plan if appropriate
- consider alternatives
- gather further evidence

If the recommendation is to proceed with the change and there are no actions that can be taken to mitigate likely adverse impact, it is important to state why.

Not applicable

8 Authorisation

The authorising officer is consenting that:

- the recommendation can be implemented
- sufficient evidence has been obtained and appropriate mitigation is planned
- the Action Plan will be incorporated into service plan and monitored

**Assistant
Director**

Date

Contact your Performance and Intelligence hub for advice on completing this assessment

RCC: phone 2443

email: annamarie.lawrence@medway.gov.uk

C&A: phone 1031

email: paul.clarke@medway.gov.uk

BSD: phone 2472 or 1490

email: corppi@medway.gov.uk

PH: phone 2636

email: david.whiting@medway.gov.uk

Send completed assessment to the Corporate Performance & Intelligence Hub (CPI) for web publication