

SLOUGH BOROUGH COUNCIL
 POLICY AND GUIDANCE ON
 SUPPORTING TRANS EMPLOYEES

Policy Schedule		
Policy owner and lead	People Services: HR Policy Manager/Diversity and Inclusion Manager	
Consultation	Trade Unions	July 2020
	Employee engagement forum	September 2020
	CMT/SLT	September 2020
	CCF	September 2020
Approving body	Employment & Appeals Committee	
Date of approval	October 2020	
Date of implementation	October 2020	
Version number	V 10 September 2020	
Related documents	Leave Policy Managing Sickness Absence Policy Dignity at Work	
Review interval	September 2023	

CONTENTS	PAGE
1. Policy Statement	3
2. Introduction	3
3. Definitions and Terminology	3
4. Understanding the Challenges Faced	4
5. Practical Issues	5
6. Action Plans for Trans Employees	7
7. Appendix A – Example of action plan	8
8. Appendix B – Manager and Employee FAQs	10
9. Appendix C – Legislation	11
10. Appendix D – Useful Information	13

1. **POLICY STATEMENT**

- 1.1 The development of a diverse and inclusive workforce – where every employee is valued and can achieve their maximum potential – is central to Slough Borough Council's (SBC) aims. The council is proud to promote itself as a Stonewall Diversity Champion and understands that trans employees have a valuable role to play in furthering the aims and aspirations of the organisation. The council values the diversity of its people and is committed to promoting equal opportunities and eliminating discrimination.
- 1.2 This policy and guidance is designed as a resource to support trans and non-binary employees. It can also be used to increase awareness of gender identity and expression, and what may constitute discrimination of trans or non-binary employees. The council aims to provide a positive transitioning space for employees; managers or employees should contact the Human Resources team for further guidance and support with individual cases.

2. **INTRODUCTION**

- 2.1 SBC recognises that coming out as trans can be a very difficult and complex time for an individual and wishes to act in a sensitive and supportive way by having clear guidance in place. The decision to come out as trans or non-binary is not something a person undertakes lightly and the support of managers and colleagues is often vital.

Trans people have been identified as a particularly vulnerable group. Research indicates a number of complex issues and negative experiences of trans employees within workplace environments. The council is committed to ensuring that no individual is subject to discrimination or victimisation as a result of the gender in which they present themselves. Whilst the Equality Act (2010) offers explicit protection to trans people, it does not address the challenges faced by people who identify as non-binary. We wish to go further than the letter of the law and ensure that all staff – including non-binary staff – are supported and protected from discrimination.

This guidance should be read in conjunction with the Dignity at Work Policy.

3. **DEFINITIONS**

- 3.1 Every person is assigned a gender at birth – male or female – based on their biological sex. A small number of people find the gender they are assigned does not match their gender identity – their internal sense of where they exist in relation to being female or male. Some individuals may also experience a gender identity that is neither exclusively

male or female or is in between or beyond both genders (non-binary).

3.2: Some people are born intersex. Intersex is an umbrella term that describes physiology that falls outside the strict male/female binary. Gender is usually assigned at birth; the individual may grow up to identify with this assigned gender, or a different gender or as non-binary.

Useful Glossary of Terms:

Gender Identity: describes the inner relationship a person has to masculinity, femininity, both or neither.

Trans: An umbrella term for people whose gender identity differs from the gender they were assigned at birth. This can include people who identify as non-binary, but not all non-binary people identify as trans.

Cisgender: A term for people whose gender identity is consistent with the gender they were assigned at birth.

Gender affirming medical treatment: Treatment that a trans person may undergo to affirm their gender identity, for example hormone therapy or surgery. It is important to note that this is a very personal choice and not all trans people choose to undergo gender affirming medical treatment. This is also referred to as 'gender reassignment' in equality legislation.

Non-Binary: A gender identity which is in-between or beyond the two categories 'man' and 'woman', fluctuates between 'man' and 'woman', or has no gender, either permanently or some of the time.

Intersex: A general term used for a variety of situations in which a person is born with reproductive or sexual anatomy that doesn't fit into the binary categories of male or female

A full glossary of terms from Stonewall can be found at:

<https://www.stonewall.org.uk/help-advice/glossary-terms>

4. UNDERSTANDING THE CHALLENGES FACED

Stonewall has conducted extensive research into being LGBT in the Workplace. The 2018 LGBT in Britain – Work Report found that:

- One in eight trans people (12 per cent) have been physically attacked by customers or colleagues in the last year because of being trans.

- Almost one in five LGBT (lesbian, gay, bisexual or trans) people (18 per cent) who were looking for work said they were discriminated against because of their sexual orientation and/or gender identity while trying to get a job in the last year.
- More than a third of LGBT staff (35 per cent) have hidden or disguised that they are LGBT at work in the last year because they were afraid of discrimination.
- Almost a third of non-binary people (31 per cent) and one in five trans people (18 per cent) don't feel able to wear work attire representing their gender expression.

5. PRACTICAL ISSUES

5.1 Trans Respect Guidelines for Employees

The following are guidelines on how to support people who are trans or non-binary:

- Respect the person's gender identity.
- Use the name and pronoun that the person asks you to. If you aren't sure what the right pronoun is, ask. Sometimes it is possible to use you/they/we to avoid the gendered pronouns such as he or she. If you make a mistake with pronouns, correct yourself and move on. Don't make a big deal out of it. If in doubt use their name instead of he/she/they.
- Respect people's privacy. Do not ask what their 'real' or 'birth' name is. Do not tell others about a person's trans status without their permission. If documents have to be kept that have the person's previous name and gender on them, keep them confidential.
- Respect people's boundaries. Avoid personal questioning.
- Listen to the person, and ask how they want to be treated and referred to.
- Slough Borough Council does not tolerate bullying and harassment on the grounds of sexual orientation, gender reassignment or gender identity. (Please refer to Dignity at Work Policy).

5.2 Confidentiality

Confidentiality is crucial. To 'out' a trans person, without their permission, is a form of harassment and a criminal offence if they have applied for a Gender Recognition

Certificate. If there is a requirement to inform a colleague, for example to update a record, ask the employee's permission to disclose before doing so. In the council, all employees can update their diversity information confidentially on the Agresso HR system. There are also options to classify your gender in a non-binary way.

Confidentiality must be maintained in compliance with the General Data Protection Regulations and Data Protection Act 2018. Inappropriate access or disclosure of employee data constitutes a data breach. Any breach of the Council's Data Protection and Privacy Policy must be reported and may result in action under the Council's Disciplinary Policy and Procedure. Personal data breaches which are likely to risk the rights and freedoms of others will need to be reported to the Information Commissioner's Office without undue delay or within 72 hours of becoming aware of the breach.

5.3 Toilets and Changing Facilities

All employees should be able to use the toilet or changing facility corresponding to their gender identity without fear of harassment. There are also a number of gender-neutral toilets in council buildings, which are accessible to all employees.

5.4 Recruitment

Where formal documents are required before commencing employment, e.g. for a right to work check, confidentiality should be emphasised when asking for a birth certificate. The birth certificate will clearly show the person was born with a different name and gender. Under current UK legislation, the only way someone can change their birth certificate is to obtain a Gender Recognition Certificate (GRC) (see pp.11-12). Many trans people will have chosen not to go through this process. The same situation can arise with a passport, although in the UK this can now formally be changed into the new name and gender without a GRC. Also, they may have a passport from another country that does not have the same legislative provision as the UK. Therefore, advice should be sought from Human Resources.

It should not be expected that job applicants and interviewees will necessarily wish to disclose trans status, as many consider it a private matter. Where a Disclosure and Barring Service check is necessary for a role requiring a criminal record check, the DBS offers a confidential checking process for transgender applicants. Prospective and existing employees will need to contact Human Resources for further information.

For more information about the recruitment process for transgender applicants please email sensitive@db.s.gsi.gov.uk

Occupational requirement

The only time it would be possible for an employer to refuse a job or promotion on the basis of an employee's gender identity is when there is a reason why, considering the nature or context of the work, being of a particular gender identity is an occupational requirement.

There will be very few cases where an occupational requirement exception could be used. An employer would usually have sought legal advice before including a genuine occupational requirement as part of a role description. They would need to include these details in the initial application information.

5.5 Records

If an employee decides to come out as trans at work and wishes to update their records, they should notify their HR Adviser who can discuss how this can be done. Employees do not need to show formal evidence in order to change their name on work systems.

All paper and digital records must be replaced with a full set of new ones in the new name and gender where possible. No records should be changed without the permission of the employee concerned.

5.6 References:

References for current or former employees who have subsequently come out as trans must make no reference to the person's former name or gender, and must use the appropriate pronoun.

6. ACTION PLANS FOR TRANS EMPLOYEES

When an employee makes the decision to come out as trans at work, it is advised that they and their main contact in HR should agree a plan for managing this whilst at the council. This plan will include agreeing dates of updating records and any required communication plans to colleagues where a change of name and/or pronoun is to be used; the council will be guided at all times by the individual's preferences. Under no circumstances should any communication or actions be taken without explicit consent of the individual. To 'out' someone, without their permission, may constitute harassment and accordingly may amount to a breach of discipline or a criminal offence. The council will take any such misconduct very seriously. An example action plan can be found in Appendix A: Example of Action Plan.

6.1 Managing the Reactions of Colleagues

An important part of the action plan is the communication about any changes to the employee's name and pronouns to colleagues and other people they work with such as other partners and customers.

The trans person may want to tell their colleagues about their trans identity individually. However, in agreement with the employee it may be useful to arrange a meeting with their colleagues. The trans employee should be free to choose whether they make an announcement themselves, or whether it is made for them by a chosen representative. If the trans employee is comfortable, it can be helpful to provide an opportunity for colleagues to ask supportive questions in person or by email, either of the person concerned, the meeting host or another relevant person. It may be useful to circulate some basic ground rules on showing respect for trans people.

6.2 Sickness and Absence from the Workplace

In putting together the action plan, absence management should be discussed. When the employee is absent for treatment or surgery the Sickness Absence Management Policy should be followed. Further advice and support is available from the Human Resources Adviser or HR Business Partner.

6.3 The Role of Occupational Health

It is important for a manager to ask what treatment (if any) an employee is planning and how the council can support that. A person experiencing gender dysphoria should be offered the opportunity to be referred to Occupational Health for advice. The role of Occupational Health (OH) will be to advise the employer on fitness for work issues as well as provide appropriate advice on any medical issues which may impact on an individual's ability to carry out the full scope of the job.

Following any surgery, advice may also be needed about any temporary adjustments to help those returning to work, who may not, at first, be able to undertake all aspects of their former role. You should not assume that trans people want to change their job within an organisation but if they request this, either as a temporary measure, or on a more permanent basis, the employer should try to help them to do this. A few occupations may involve an Occupational Requirement (the work to be performed only by a person of one specific sex). An agreed temporary move to another job may be advised. Trans people must not lose their jobs because of this, and they may be retained where other staff are able to do the task where the Occupational Requirement applies. Trans people with a Gender Recognition Certificate *must* be regarded as being of the post-transition gender status for the purposes of ORs.

Any individual referred to Occupational Health can expect the issues to be dealt with in the strictest of confidence, as would be expected from any other practitioners providing this service.

APPENDIX A

Example of Action Plan to support Employees

This action plan should be confidential and discussion should take place between the trans employee and HR to agree where copies are kept and who should have access to them.

- Contact your Human Resources Adviser
- Does the employee feel comfortable continuing in their current role? Are there any temporary or permanent changes to the role which should be considered to support the employee?
- If the employee plans to undergo gender affirming medical treatment, what is the expected timescale of this, if known? Identify the periods of planned absences needed to enable them to access treatment.
- What will the employee's new title, pronoun and name be?
- Does the employee have any concerns around changes to work dress? How can this be supported?
- Are there any dress codes which need to be considered? (Do new uniforms need to be ordered?).
- Employees can choose which toilets to use to match their gender presentation; the council also has a number of gender-neutral toilets in council offices.
- When, how and which Human Resources records and or systems will need amending?
- (Consider for example: online records, employee ID card, employee records and databases, finance records, pensions, websites).
- When and how should colleagues be informed?
- Is there any education material which could be used?
- If this action plan is not drawn up with input from the line manager, consider how and when they might need to be involved.
- Additional guidance can be sought from HR.
- Actions agreed.
- Date of next meeting.

APPENDIX B

MANAGER AND EMPLOYEE FAQs

I identify as trans and wish to transition, who do I need to contact first for support?

You can contact Human Resources who can provide advice and guidance on transitioning at work and the support available.

Where can I get confidential advice around transitioning?

From an organisational perspective, you can contact Human Resources or alternatively there are many support organisations that can provide personal support, these are listed in Appendix D.

Will all my colleagues be informed of my transition?

Other employees will only be informed according to your wishes, which will be discussed when you contact HR.

Can I assume a different role within the council while I'm transitioning?

Normally this is not possible as you will have been employed for your skills in the role that you currently occupy; adjustments to your role can be considered, but there is no guarantee that a suitable alternative role can be provided.

Can I use the facilities, for example changing rooms and toilets, which match my gender identity?

Yes, you should use the facilities that match your gender identity; the council also has gender-neutral toilet facilities at several council buildings.

Who do I go to if I'm being bullied or harassed about my transition or gender identity?

You should speak to your manager in the first instance; you may also wish to speak to your HR Business Partner or the Diversity and Inclusion Manager.

What support will the council offer me if I'm transitioning?

The council will do its utmost to make the process of transitioning as supportive as possible; any medical appointments will be treated in line with the Sickness Absence Policy. The council also offers an Employee Assistance Programme which can provide additional support. Details are available on the staff intranet: <http://insite/people/health-and-wellbeing/employee-assistance-programme/>

What happens after a person has transitioned?

The employee will be living in their affirmed agenda rather than that assigned at birth. They should always be referred to using the correct pronoun, and they should be treated with the same respect given to all employees in line with our Values and Behaviours and our Dignity at Work policy.

Someone has told me they want to transition, what do I do?

If the employee needs support from the council, they should contact their HR Business Partner. It is important for managers to be supportive and to provide as positive an environment as possible for transitioning. Please note that it is a criminal offence for any employee who has acquired protected information regarding an individual's gender identity to disclose that information to any other person. This also applies where they obtained the information in an official capacity (such as a member of HR or line manager).

Can you outline what the process is likely to be?

It is important to recognise that every person is an individual and their experience and circumstances will not always be the same; however the following provides some guidance:

The person informs the council that they are trans and may provide information of any name/pronoun changes.

At the person's request, the council updates its records to reflect any name change and their new gender.

A new employee file is created and any documents revealing their former name and gender that must be kept (for example, pension records) are marked 'confidential'.

The person may apply for a gender recognition certificate in order for their birth certificate be reissued to match their gender identity and name. Currently, legislation requires trans people to live in their chosen gender for at least two years before they're eligible for a gender recognition certificate. Please note that the council has no need to see this document and the certificate is not required to make amendments to employee records.

The person is now legally recognised in their chosen gender – all documents and references that have not already been changed must now be changed.

If the person is a member of the local government pension scheme, they must send their new birth certificate to the appropriate person to ensure their gender is changed on pension records.

APPENDIX C Legislation

Equality Act 2010

The Equality Act 2010 has strengthened and streamlined previous equalities legislation. Gender reassignment is one of the nine protected characteristics within the Act and is also included in the Public Sector Equality Duty. Importantly, the definition of gender reassignment within the Act gives protection from discrimination to a person who has proposed, started or completed a process to change their gender. As such, trans people do not have to undergo medical treatment to be

protected by the Act. What matters is that a person has the intention to permanently live, or are already living as their preferred gender. In short, the Act protects:

- Trans people whether or not they are undergoing gender affirming medical treatment
- People who experience discrimination because they are perceived to be trans (whether or not they are);
- People who are discriminated against because of their association with a trans person.

The Act does not specifically address the challenges faced by people who identify as non-binary, however the Equality Duty requires that the Council has due regard to the need to:

- Eliminate discrimination, harassment and victimisation
- Advance equality of opportunity; and foster good relations.

The Gender Recognition Act 2004

In the past, a person's legal gender could only be defined by their birth certificate and could not be changed. The Gender Recognition Act 2004 allows trans people to apply to have legal recognition of their acquired gender by acquiring a gender recognition certificate. This certificate enables trans people to apply for a new birth certificate to be reissued in accordance with their gender identity.

N.B. you should never ask to see a person's gender recognition certificate. It is not necessary to have a GRC to change other documents. A trans person can change their name by deed poll and apply for a passport in their new name and change their work record to their affirmed gender; however, changing your passport (or other records) to be in your new name and gender doesn't give any legal recognition to your change of gender. It's merely a recognition by those record holders that you've adopted a new identity.

The General Data Protection Regulation (GDPR) and the Data Protection Act 2018

Under relevant data protection legislation, trans identity and gender reassignment constitute 'special categories data'. Therefore information relating to a person's trans status cannot be recorded or passed to another person unless conditions under chapter 2 of the Data Protection Act 2018 for processing sensitive personal data are met. Please note that it is a criminal offence for any member of staff who has acquired protected information regarding an individual's gender identity to disclose that information to any other person without the individual's consent. This applies where they obtained the information in an official capacity (such as a member of HR or line manager).

The Human Rights Act 1998

The Human Rights Act 1998 provides protection to trans people, principally under the right to a private life. The courts have interpreted the concept of 'private life' in a very broad way to cover, among other things, a person's right to express a sexual identity, to live a particular lifestyle and to choose the way they look and dress. It also means that personal information (including official records, photographs and letters) should be kept securely and not shared without the permission of the individual concerned. In addition, the right to privacy states that unless a public

authority is acting in accordance with the law, there should be no interference by a public authority with a person's exercise of their right to a private life.

APPENDIX D

Useful resources:

www.genderedintelligence.co.uk

Extensive information and advice with signposting to further resources

www.stonewall.org.uk

Extensive guides on all issues around LGBT+ equality