



**TRANSGENDER EQUALITY
AND
TRANSITIONING IN THE
WORKPLACE
GUIDANCE**

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Introduction

The Council is committed to ensuring transgender people are treated with respect and dignity and to preventing discrimination against transgender people in the workplace. As an equal opportunities employer, the Council recognises that a culture of acceptance and inclusiveness, free from discrimination, harassment and bullying is important in ensuring fairness in all areas of its employment for all individuals to fulfil their potential and add value to the organisation.

The Council takes transgender equality and inclusion seriously and transgender employees will be supported, valued and respected. The Council aims to increase awareness and understanding of transgender equality and transitioning in the workplace.

This guidance note is in accordance with the Diversity and Equality Policy and provides information and good practice so that no individual who is intending to transition, is transitioning, or has at some time transitioned, is unfairly disadvantaged or excluded in terms of any aspect of their employment.

The guidance aims to:

- Engage and educate the workforce in understanding transgender equality.
- Raise awareness and understanding of the issues facing transgender people in the workplace/employment.
- Assist line managers in supporting transgender employees and transitioning employees.
- Support transitioning employees and provide guidance on what they need to know and do.

Transgender Awareness in the Workplace

The inappropriate use of language, often due to a lack of understanding and knowledge, may cause offence and distress to a transgender person, therefore, understanding the appropriate terminology relating to transgender and transitioning may help to minimise the potential for offence and develop a culture of inclusiveness. A separate list of definitions is supplementary to this guidance that will assist in raising awareness and understanding for those who are not familiar with Transgender and Transitioning. The definitions can be found on the intranet.

For the purposes of this guidance, Transgender and Transition are the terms used.

Transgender (often abbreviated to Trans) is an umbrella term describing people who present themselves in a gender that differs from the one they were assigned at birth. This broad term refers to those who cross over, move between, or otherwise challenge the socially constructed border between genders.

Transition is the process and the steps a transgender person may take to live in the gender they identify as. Each individual's transition will be different, for some it may involve medical interventions such as hormone therapy or surgery (but this is not a prerequisite for transition). It might also include telling friends and family, dressing differently or changing official documents. The term gender reassignment can also be used to describe a person's transition and is the term used, and is a protected characteristic, under the Equality Act 2010.

Transphobia in the workplace will result in an unwelcoming environment and have a negative impact upon a transgender employee's wellbeing and work performance. Creating an open, accepting, working environment where employees are encouraged to be themselves, and are valued and respected for the work they do, will allow all individuals to reach their full potential. Having support mechanisms in place for transgender employees and managers will help achieve this. All employees should have full support to challenge or report any transphobia that they may see or hear.

Managers play a key role in creating an open and inclusive environment and can assist to improve understanding and awareness of transgender equality and thus improve working relationships, making it clear that transphobia will not be tolerated.

Resources Available to Raise Awareness

Supporting this guidance, the following documents are all available on the intranet.

- Definitions - Transgender and Transitioning
- FAQs Transgender Equality and Transitioning in the Workplace
- FAQs Transgender Equality and Transitioning in the Workplace - Transitioning Employee Perspective
- Transgender and Transitioning in the Workplace Useful Contacts

More information is available on the Equality and Diversity pages on the intranet. Also, the Equalities page on the intranet provides details of the equality groups in People and Organisational Development.

Managers or employees may also wish to check the Learning Academy on the intranet which provides information on development opportunities in relation to Equality and Diversity.

Overview of Legislation

There are various pieces of legislation that provide protection for transgender people in the workplace.

The Gender Recognition Act 2004 provides individuals, over the age of 18 who have undergone gender reassignment (transition), to apply for a full Gender Recognition Certificate (GRC). A transgender person can apply for a full GRC if they have been assessed and have or have had gender dysphoria (a recognised medical condition), lived in their acquired gender for at least 2 years and intend to live in their acquired gender for the rest of their life. The issue of the full GRC provides legal recognition of their 'acquired' gender and all rights appropriate to a person of their acquired gender, including the right to retire and receive state pension at the age appropriate to their acquired gender.

The Act provides protection from non-consenting disclosure of an employee's transgender history. Whether an employee holds a GRC or not, their transgender history should not be disclosed without consent. An employee does not have to hold a GRC in order to change their work details.

Under the **Equality Act 2010** a person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing, or have 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. Gender reassignment is a personal process that may involve medical interventions (counselling, psychotherapy, hormone therapy or surgery) but does not have to. Under the Act, a transsexual person has the protected characteristic of Gender reassignment.

The 2010 Act provides protection for transgender employees, including:

- **protection from direct discrimination** – where an employee is treated less favorably because they identify as a transgender person
- **protection from indirect discrimination** – where there is policy or procedure that applies to all employees but disadvantages transgender employees eg, someone having to comply with a policy or procedure that forces the individual to disclose their transgender history
- **protection from harassment** – where unwanted conduct related to transgender violates a person's sense of dignity or creates an environment that is intimidating, hostile, degrading or humiliating for that person
- **protection from victimisation** – unfair treatment of an employee who has made or supported a complaint about transgender discrimination in the workplace
- **protection in taking time off work to transition** – where an employee is treated less favorably due to absence from work in order to transition eg, giving a transgender employee less time off for medical treatment than they would receive for sickness.

The 2010 Act places a public sector duty requiring public authorities to pay due regard to eliminating discrimination, harassment and victimisation of transgender employees, to advance equality and to foster good relations between transgender people and others.

Under the **Data Protection Act 2018** information relating to gender reassignment will be classed as “sensitive personal data” and can be processed only for certain specified reasons set out in the Act.

Article 8 of the **Human Rights Act 1998** gives everyone, including transgender people, the right to privacy and family life.

Transgender Equality

The best practices applied in the Council (some of which are Legal requirements) include the following:

Recruitment and Selection

Diversity and equality monitoring is essential in promoting good employment practice, thereby demonstrating the Council’s commitment to providing equal opportunities for all job applicants and employees.

The Council's standard job application form omits reference to gender, marital status, age, ethnicity, sexual orientation, religion and beliefs. Applicants are required to submit Diversity and Equalities Monitoring information along with their job application form. The selection panel are not given access to the Diversity and Equalities Monitoring information. This instead is retained confidentially by People and Organisational Development and used for specific equality and diversity purposes. The process is designed to ensure that the application form is assessed purely against the job profile for the post and to reduce the risk of improper prejudice influencing recruitment and selection decisions.

The Recruitment and Selection Guidance also states that interview questions must be designed to obtain information solely against job related criteria as set out in the job profile and any which could be considered as discriminatory must be avoided eg asking questions relating to someone’s personal life.

Disclosure Scotland and PVG Scheme

As detailed in the Recruitment and Selection Guidance, jobs deemed to be ‘regulated work’, is where the jobholder has regular contact with children and protected adults and requires to be a member of the Protecting Vulnerable Groups Scheme (PVG). The Council will obtain a PVG Scheme Record Update from Disclosure Scotland in respect of the preferred candidate to ensure that they are still suitable to undertake ‘regulated work’, prior to an offer of employment.

Disclosure Scotland have a special application process and additional guidance for transgender people completing a Disclosure Application Form. This process assists to ensure discretion for transgender individuals who do not wish their previous gender and names to be disclosed to the requesting organisation. For further information on this process visit www.disclosurescotland.co.uk/publications/EqualityandDiversity.

References

Requesting a reference(s) for a 'preferred candidate' is done towards the end of the recruitment and selection process and the name provided on the application should be used. In some cases, references from a previous employer (or certificates showing educational qualifications) may require the person to disclose a former name and gender identity. In such cases, strict **confidentiality** must be respected and ensured.

When giving a reference for someone moving to a new job or for someone who has transitioned since leaving the Council (where it is known), it should be in the name which will be used in the new job and not 'hint at' a former name. Strict **confidentiality** and respect for dignity should be applied and care taken in terms of the use of pronouns and names.

Protection from Harassment

Harassment of an individual on the grounds of the person being transgender or transitioning is unlawful. Any incidents of bullying or harassment against a transgender employee will not be tolerated and will be dealt with in accordance with the Council's Dignity and Respect at Work policy and supporting procedure and guidance. If an employee becomes aware of any harassment, they should inform their line manager so that appropriate action can be taken.

The Dignity and Respect at Work procedure and guidance includes examples of objectionable behaviours that constitute harassment. In the case of transgender and transitioning, examples might include intentionally speculating about someone's gender or ignoring someone's preferred pronoun or disclosing someone's transgender history.

Protection from Victimisation

Victimisation on the grounds of the employee being transgender or transitioning is unlawful discrimination. It is unlawful to victimise:

- an individual following a complaint made in good faith that they have been discriminated against on grounds of being a transgender person or transitioning,
and/or
- someone who supports, in good faith, a complaint of discrimination
and/or
- someone who gives evidence, in good faith, relating to a complaint about discrimination.

Any complaint of victimisation will be subject to an investigation in accordance with the Dignity and Respect at Work policy and supporting procedure and guidance.

Overview of Transitioning

Transitioning will be unique for the individual and there is no 'right' or 'wrong' way to transition.

Transitioning can be done with or without medical supervision and involves changing physiological or other characteristics of sex and may include medical intervention (medical transition) such as counselling, psychotherapy, hormone therapy or surgery, but it is individual to that person and they may not want or be able to have this. Transitioning could also involve dressing differently, changing official documents, telling friends and family or a number of other things (social transition). For some individuals it may involve social transition or medical transition or both.

Regardless of what the transition involves for the individual employee, they still require to be supported to transition at work and following their transition, and managers play a key role in this. Approaching their line manager to talk about transition may be a very difficult step for some to take and the individual could be suffering anxiety and stress.

How to support an employee who is Transitioning

The employee may initially wish to talk to a People and Organisational Development Adviser before approaching their line manager about their intention to transition or during transition. The People and Organisational Development Adviser can provide support and advice to the employee and link with their line manager if the employee wishes this. Once the employee has informed their line manager it is important the line manager discusses with the employee how they would prefer their transition to be handled. The line manager can also seek support from a People and Organisational Development Adviser. It must be noted there is no set format that can be applied to all cases and circumstances will vary according to the individual's needs so it is important to adopt an approach that meets the needs of the individual employee.

During the transition period, line managers should be as flexible as possible to accommodate the employee, listening to the employee's wishes and respecting their confidentiality.

Listed below are some areas that should be discussed between the line manager and the employee. A *suggested* Confidential Action Plan template is attached in Appendix 1 which can be adapted to meet the employee's needs.

Key Dates and timescales - discuss and agree key dates before, during and after the employee's transition including regular review meetings. The key dates will be individual to the employee.

Time off for medical treatment or appointments - discuss as far as possible in advance what time off will/may be required for medical treatment or other associated appointments or absence. Each transgender employee's requirements will be different depending on the individual's circumstances. The length of time required will vary and there may be waiting times for certain treatments and the employee may require to travel to receive treatment. Line managers will be supportive and flexible in terms of time off, using special leave provisions such as absence for medical appointments or taking annual leave, flexi leave, time-off in lieu etc.

In some circumstances, the transgender employee may undergo medical treatment such as surgery and this may, but not always, result in a prolonged incapacity for work. The line manager can seek advice from a People and Organisational Development Adviser in such circumstances.

Line managers should be aware that under the Equality Act 2010, a transgender employee should not be treated less favourably due to absence from work in order to transition.

Informing Colleagues - discuss with the employee how they would like colleagues to be informed of their transition. Determine who will take responsibility for informing those who need to know. The wishes of the individual should be respected as far as possible. The transgender employee may wish to be the one talking about their transition to their colleagues and/or contacts, others may prefer not to. The transgender employee, at the point of transition, may wish to take a short time off work and return in their new name. Normally, annual leave will be used for this purpose. This period of absence can be used as an opportunity for the line manager to brief others, depending on the employee's wishes. The line manager will need to know when the disclosure is to take place so that appropriate support can be provided.

The line manager should be able to provide and discuss general information about transgender equality and transitioning from this guidance and associated FAQs. The line manager should also provide specific information, in line with the transgender employee's wishes and maintaining their confidentiality, to enable other employees to understand the situation of the transgender employee. The transgender employee may prefer to discuss their transition with colleagues either individually or as a group, but it is entirely their choice.

The line manager, with the support of People and Organisational Development, should be proactive and consider any training needs or awareness raising sessions that may be required. In the event of issues arising following the disclosure, the line manager should deal with these appropriately and can seek advice from a People and Organisational Development Adviser.

After Transition - the line manager and employee should discuss and agree how any continued support following the employee's transition is to take place. This will depend on the individual employee and their wishes, but continued support will be available.

Personal Records and Systems - Employees do not need to have a Gender Recognition Certificate (GRC) in order to change their details on records or systems. This should be dealt with the same way as any other person changing their name. To

refuse to change name, title and gender on an employee's record at the start of their transition when they first change their name, is discriminatory.

At the appropriate time, agreed with the employee, all personal records should be changed to reflect the employee's new gender and name.

In some circumstances it may be necessary to retain records relating to an individual's identity at birth for a specific purpose eg where an employee is a member of the Local Government Pension Scheme. Access to any such records showing the change of name and any other details, (eg records of absence for medical treatment) will be restricted to staff who require such information in order to perform their specific duties. Deliberate breaches of confidentiality will be treated in the same serious manner as disclosure of personal details of any other member of staff and will be handled under the Council's Managing Discipline policy and supporting guidance and procedure.

When a full GRC is obtained, the HMRC is usually informed automatically. The employee should make sure that the Council is also aware of this and payroll records and National Insurance contributions will require to be updated.

If the employee is a PVG Scheme member they are required to notify Disclosure Scotland of any change in relation to their name or a change in gender, as indicated by the issue of a GRC, within 3 months of the change taking effect. See www.disclosurescotland.co.uk for further information.

If the employee is a member of a registered body such as the SSSC or GTC then they may wish to check with the body as to any requirements in relation to change of name or gender.

Transgender employees may choose voluntarily to disclose their status at a secondary level, for example, answering an equal opportunities questionnaire, or asking for support from a line manager. Again, strict confidentiality should be observed.

Pensions - An employee who has a full GRC has all the rights of a person of their 'acquired' gender. This means that the employee will be able to retire at the age appropriate to their legal gender. This may impact upon their state pension or any pension a spouse or civil partner may receive based on the individual's earnings or National Insurance contributions.

For further information and guidance in relation to state pensions go to www.gov.uk/state-pension.

Changing e-mail address and ID badge - changing the employee's name on email addresses, other IT accounts, the employee finder on the intranet and ID badge will also need to be done. The line manager and employee may wish to discuss this with a People and Organisational Development Adviser at an early stage and give consideration of the timing, in line with the employee's wishes. For example the employee's ID badge and email address could be updated and available for when colleagues and/or contacts are informed.

Use of Facilities - Once the transition occurs and the employee changes their gender expression, discloses to colleagues and is living and working in their new gender on a full-time basis, the employee will be able to use the toilet and changing facilities (where applicable) appropriate to their new gender. This may be a difficult stage for some employees, and they may not be comfortable using assigned gender facilities straight away and may prefer to use assigned gender neutral facilities initially (where they exist). This will be led by the individual and they will not be asked to use such facilities. The timing of this should be discussed and agreed between the line manager and employee. The line manager should provide appropriate support to colleagues and be prepared for any potential inappropriate comments from colleagues of the employee and should deal with this through communication and discussion with the relevant individuals.

Transfer - There may be **exceptional** circumstances, depending on whether a request can be accommodated, whereby the transgender employee may request the temporary transfer to a suitable alternative post, during the transition period. This could be due to the nature of the transgender employee's role, or certain duties associated with their role or other issues making it difficult for the employee during the transition period. The line manager, with advice from a People and Organisational Development Adviser, may consider the transgender employee's exceptional circumstances and whether a temporary transfer is possible.

These guidance notes aim to provide answers to any queries on Transgender Equality and Transitioning in the Workplace and hence a manager or employee is expected to refer to these and the accompanying FAQs, Definitions and Useful Contacts, all available via the intranet pages, in the first instance. If the information to answer a query cannot be found within the guidance notes, FAQs, Definitions or Useful Contacts, it can then be raised with the HR and Payroll Service Centre by e-mailing AskHR@aberdeencity.gov.uk

APPENDIX 1 – Confidential Action Plan Template

<i>Planning the Transition</i>	Who?	When?
<p>Initial discussion about planned transition (including employee's intentions and <i>may</i> include any medical advice)</p> <p>If the employee prefers to talk with People and Organisational Development initially, guidance will be provided, and People and Organisational Development can then make links with line manager and attend any meetings to provide support</p>	<p>Employee Line manager People and Organisational Development</p>	
<p>Ensure employee is aware of 'Transgender Equality and Transitioning in the workplace guidance' and supporting documents</p>	<p>Line manager People and Organisational Development</p>	
<p>Ensure employee knows they will be supported at work through the transition process</p>	<p>Line manager People and Organisational Development</p>	
<p>Think about and share a timeframe in relation to a planned transition – it <i>may</i> be possible to plan out each step and how long they will take, but not in all cases</p>	<p>Employee</p>	
<p>Create a transition plan that should consider and cover:</p> <ul style="list-style-type: none"> • Plan time off that may be required for appointments or treatment (<i>may</i> be guided by any medical advice) • The date the transition occurs (this is the date the employee changes their gender expression) • Decide how and when colleagues will be informed. Make a list of who needs to know. This will be individual to the employee who may or may not wish to do this themselves • Consider whether any training or awareness sessions should be provided for colleagues • Decide what needs to be updated eg ID badge, personal records, IT systems, Disclosure Scotland etc and when this should happen (in most cases this would be done in advance so that everything is ready on the day the employee transitions) 	<p>Employee Line manager</p> <p>Employee</p> <p>Employee Line manager</p> <p>Line Manager People and Org Development</p> <p>Line Manager Employee</p>	

<ul style="list-style-type: none"> • Prepare for the transition day – readiness for the first day 	Employee Line manager	
<i>Following Transition</i>	Who?	When?
Discuss and agree how any continued support following transition is to take place, depending on individual employee's wishes.	Employee Line manager	