

## GENDER IDENTITY AND INTERSEX INCLUSION: GUIDANCE AND POLICY

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### Version control

Version No	Purpose/ Change	Author	Implementation Date	Approved by	Last review date	Next review date
1	To meet the needs of LBWF	Carmel Murray	December 2017	Management Board/ Union consultation	NEW	December 2019
2	To widen the scope and in anticipation of new legislation	Themistoklis Pagoudis	December 2019	GB/ TU consultation	December 2017	December 2021
3	Removal of term ‘preferred’ before pronouns	Themistoklis Pagoudis	February 2020	N/A	December 2019	December 2021

This document can be read in conjunction with:

- the ‘Equality’ section of the Staff [Code of Conduct](#);
- [DBS guidance](#)
- [Managing Sickness Policy and Procedure](#)
- the [Equal Opportunity](#) policy statement and [Public Sector Duty and Equality Act 2010](#) guidance;
- the [Fairness at Work](#) procedure and the [Anti-harassment and bullying](#) policy and standard;
- the [Conduct and Discipline](#) procedure; and
- the [Whistleblowing](#) policy.

If you have any queries regarding the content of this policy and procedure, please contact HR on [HR@walthamforest.gov.uk](mailto:HR@walthamforest.gov.uk) the HR team will be able to give advice and practical guidance on this process as required.

## 1. Introduction

This document explores and addresses issues around:

- gender identity and diversity (trans, non-binary, gender-fluid etc.) and
- variations in sex characteristics (intersex condition)

in relation to the Council's residents/ service users, staff, and job applicants. It aspires to provide protections beyond legal compliance and are in anticipation of the reform of the Gender Recognition Act by recognising that the current legislation does not fully cover all issues trans and other gender identities or intersex people face.

The document refers to legal requirements as well as to what the Council considers to be good practice, and, therefore, what the Council expects from its staff. Naturally, no guidance or policy can fully capture the complexity and, at times, fluidity of human experience, anatomy and physiology, especially when it comes to the experience of gender identity and expression or the physical—sex—characteristics, which have always been diverse, personal, and fluid both across human history and within a person's life. Therefore, although in order to govern workplace affairs consistently and in compliance with the UK legislation a written document is useful, it is recognised that the wonderful diversity and fluidity of the matters this document explores will not be captured in their entirety.

The Council has sought expert advice from known LGBTQ and Intersex organisations and it important to note that the subject of this document is a continually evolving one, in a changing cultural and legal environment (the UK government is currently considering changes to the Gender Recognition Act 2004)).

A useful glossary can be found in '[Appendix 2: Gender Identity and Expression and Intersex terminology](#)'. In any case, however, the individual's experience and reasonable preferences and requirements will inform any decision as to what is appropriate in the circumstances, even if their experience is not captured by this document.

The aims of this guidance and policy are to:

- raise awareness around gender and sex diversity against any oppression or erasure of the respective communities;
- place the individual's experience at the centre of attention as opposed to any societal pressures or medical and legal definitions and procedures;
- deconstruct the binary classification of sex and gender as well as the notion of gender essentialism;
- promote the values of dignity, respect and fair treatment, eliminate any form of discrimination and/ or harassment, and ensure the Council's compliance with the Public Sector equality duty;
- lift barriers that gender variant and intersex people might otherwise face when using the Council's services or whilst in employment with the Council;
- enable staff to support people who transition by raising awareness and setting the acceptable behavioural standards of confidentiality and discretion;
- empower all employees and managers in challenging inappropriate behaviour;
- enable everyone to recognise the roots of unconscious biases and challenge themselves;
- inform other Council's processes and procedures where inappropriate behaviour may be subject to disciplinary action and/ or a criminal investigation.

### 1.1. Policy statement: The Council's position

The Council aspires to be a forward-thinking service provider and employer that embraces and protects diversity and equality of opportunity. It also aims to be an organisation that seeks to learn from emerging good practice and thought, evolving inclusive language and terminology relating to gender identity and the intersex condition.

For these reasons:

- The Council places at the centre of attention the individual person's view of themselves. Gender identity and expression as well as any transition and gender affirmation are unique personal experiences. Sex characteristics can co-exist in a naturally occurring variation of human development.
- As people may have overlapping social and political identities, these may be grounds for overlapping forms of discrimination. This 'intersectionality' requires an increased awareness when ensuring people are treated with dignity and respect as multi-faceted individuals.
- The Council recognises the notions of gender identity and expression as well as the intersex conditions as characteristics that merit protection that the current legislation unfortunately does not provide at a satisfactory level.
- The Council recognises that:
  - not every gender variant person will present themselves in the same way;
  - not every trans person will choose to undergo any medical treatment or legal procedure;
  - a medical or legal transition are not required for a trans person to self-identify as trans or identify with and present themselves in the way that suits them;
  - not every intersex person will choose to make any changes to their anatomy or physiology.
- The Council will extend all reasonable support to individuals who undergo transition, in the same way as with any life-altering decision or condition.
- This document is an attempt to explore complex issues around gender diversity and variations in sex characteristics in line with the LGBTQI community's views and terminology. However, the Council is open to feedback and aspires for this document to be open to change and fluid.

## **1.2. Responsibilities within this policy**

Management are expected to be role models for behaviours required of others and must therefore behave according to the standards of fairness and equal treatment in the way that they recruit, communicate, manage performance, promote, and maintain discipline. They must identify problems and take action where they perceive it to be appropriate, maintaining good communication, listening carefully and investigating objectively.

Equality and diversity are included in the Council's Induction training for all new staff. Specific recruitment and selection training are available to all employees involved with recruitment.

As with all Diversity and Inclusion issues, staff have a responsibility to proactively educate themselves around such matters. Every member of staff has a personal responsibility for their own behaviour and must treat all their colleagues with respect and fairness. All staff must act at all times in accordance with the Council's Code of Conduct and any other relevant policies. This applies to activities undertaken on and off site or any activity associated with their employment with the Council.

Examples of unacceptable behaviour that may be dealt with as a disciplinary matter are:

- any form of unlawful discrimination, harassment, bullying, or victimisation;
- any offensive conduct or views expressed in or outside the workplace, unlawful or not;
- speculating about someone's gender;
- ignoring someone's pronoun;
- non-consenting disclosure of or consistently referring to someone's trans history;
- unwanted and intrusive questioning, for example, questions about medical treatment or physical characteristics;
- questioning of somebody's ability to convincingly 'pass' as non-trans;
- forcing somebody to use the non-preferred toilets.

The Council recognises these identities and conditions as natural, valid, and meriting protection and support in relation to the individuals' needs and challenges they may face.

Breaches of this guidance and policy will be dealt with under the Council's Disciplinary Procedure. Discrimination may be considered to be gross misconduct and may result in dismissal. For more information around the above pieces of legislation, please refer to [Appendix 1: The legal framework](#).

All employees must report any breaches of this policy, whether by colleagues, clients or other third parties, to the appropriate line manager immediately. Individuals who witness an inappropriate behaviour do not have to identify as gender variant or intersex themselves in order to be offended and entitled to complain.

The council hopes that through constructive communication and training, managers can help staff acknowledge and overcome their biases and prejudice. This document can be a first port of call for staff and Management awareness, while the [Appendix 4: Sources of information, advice and support](#) provides managers and staff with more ways to inform themselves and others. Further assistance can also be obtained from Human Resources.

## **2. Protected categories under this policy**

This section explores the notions of trans, non-binary, and intersex, in order to acknowledge their existence, validity, and value as personalities and professionals. By doing so, the Council aims to raise awareness amongst its employees in order to enable the genuine inclusion of service users and staff with diverse experience of gender and/ or the intersex condition.

### **2.1. Gender diversity**

This section aims to the two main umbrella terms of gender identity whilst recognising that the complexity and fluidity of the experience and terminology of gender may not be captured in their entirety.

Please refer to [Appendix 2: Gender Identity and Expression and Intersex terminology](#) for more terms and their definitions.

#### **2.1.1. Transgender**

A contemporary understanding of the term 'trans' is that of an umbrella term for a person whose gender identity or expression differs from their assigned at birth sex. This may include people whose gender identity is opposite to their sex assigned at birth (for example, trans woman who was assigned the sex 'male' at birth) or people who do not self-identify as exclusively female or male (can be either or, both, something in between, or neither of the two).

Transition is a complex, highly personal, life-altering process, where the individual is most likely to require the Council's support. It can be seen as a threefold process: social, medical, and legal. Not every person undergoing transition will choose to follow all steps or in the same order. Trans people are the experts in their own life.

A person can be at any stage in the transition process: from proposing to reassign their gender, to undergoing a process to reassign their gender, or having completed it.

For more information on how employers can support a trans person who decides to transition, please refer to [Appendix 3: The transition process](#) for further information.

### **2.1.2. Non-binary**

This term is largely related to the term 'trans', with the difference that a non-binary person does not self-identify as exclusively male or female. Alternative terms are: 'genderqueer', 'gender non-conforming', or 'gender variant'. Please refer to the [Appendix 2: Gender Identity and Expression and Intersex terminology](#).

There are numerous sub-types under the 'non-binary' umbrella, which are outside the gender binary by:

- self-identifying as having two or more genders (bigender or trigender);
- fluctuating between genders (gender fluid); or
- by having no gender (agender) etc.

### **2.2. Intersex**

This term refers to people with a combination of features that conventionally distinguish 'male' and 'female' anatomy, organs, hormones, or chromosomes. This is a naturally occurring variation of human development that nature presents us with.

Intersex is not a discreet or homogeneous category of certain sex characteristics. In contradiction with the binary social construct of 'sex' (male vs. female), intersex is a category that reflects a natural biological variation. In practice, what a given culture may see as a 'female' organ may coexist on the same person with an organ that is conventionally seen as 'male'.

In some intersex variations, the appearance at birth is neither clearly 'male' nor 'female'. In addition, the 'sex' assigned, and the anticipated gender role (boy or girl) assumed at that time, may not be consistent with the person's gender identity and may, therefore, result in a need to change the gender role at a later stage. However, the intersex condition should not be confused with gender identity as, while being intersex may inform an intersex person's identity, intersex people might experience gender in various ways.

The intersex condition is not covered as a separate category under the Equality Act 2010, while the category of 'sex' refers to the sex that has been recorded on the person's birth certificate. It should be noted, however, that some conditions will fall within the Equality Act 2010 in relation to the protected characteristic of 'disability'. This is not to say that being intersex is an impairment, illness or disability. Nevertheless, there may be individuals who have undergone forced intervention or surgery, or individuals whose intersex condition is accompanied by other physical differences that can be regarded as disabilities.

The category of gender reassignment will only apply where the person decides to go through this process; however, there should be no assumption that an intersex person has to do so.

### **3. Inclusive language and customer service**

The following applies on interactions with both colleagues and service users. All staff have an essential role to play in providing the Council's services in a sensitive and inclusive manner, free from any form of discrimination.

Staff need to be aware of the differences between notions such as physical (sex) characteristics, gender identity, and sexual identity. They need to be mindful of the diversity in the above as well as relationships and families and refrain from assumptions.

The individual's name, title, and pronoun must be respected. Some people's titles and pronouns are binary (for example, 'Miss' or 'Mr' and 'she' or 'he'), whilst others' are gender neutral ('Mx.', 'they').

When taking phone calls especially from the public, staff should be alert to voices that do not match names and titles. Some people—regardless of their gender identity or expression—may find it difficult to have their correct gender acknowledged. Staff receiving phone calls should listen carefully to the name and, if necessary, ask politely ‘How would you like to be addressed?’. Name and matching pronouns and title should be carefully noted.

Whilst it is important to use respectful, inclusive language; it is recognised that sometimes employees may through naivety or lack of awareness use the incorrect terms, and people may interact with these kind of mistakes differently, and they should lead on any follow-up discussion. However, in the absence of an ongoing discussion with the trans customer, best practice would be for the employee who made a mistake to simply apologise promptly and move on with the conversation.

Intentional or persistent misgendering or non-inclusive language may be dealt with as a disciplinary matter.

The Government’s guide on [Providing services for transgender customers](#) and the Gender Identity Research and Education Society’s [e-learning webpage](#) offer good introductory guidance on trans inclusive customer service. For more resources, please refer to [Appendix 4: Sources of information, advice and support](#).

#### **4. Recruitment: vetting and onboarding**

In the vast majority of cases, the candidate’s gender or sex characteristics have no bearing on their ability to do their job. Applicants and interviewees for employment are not expected to disclose their trans history or intersex condition. There is no obligation for a trans person to disclose their status as a condition of employment. Moreover, non-disclosure, or subsequent disclosure, is not grounds for dismissal.

##### **4.1. Genuine Occupational Requirements**

Under the Equality Act 2010, employers may discriminate lawfully in limited circumstances: where, having regard to the nature or context of a job, being of a particular protected characteristic (for example, sex or not being a transsexual person) is an occupational requirement.

Some examples are jobs that involve:

- conducting personal searches pursuant to statutory powers;
- working in supported housing/ care or a private home where there would be close physical or social contact, or knowledge of the intimate details of a person’s life, and the employer can show that people may object; or
- single-sex counselling services for survivors of sexual violence.

Please refer to the [Recruitment and Selection Policy](#) for detail on this process.

This section largely refers to candidates who:

- self-identity as and/ or present in the gender that is opposite to the required by the role gender;
- are undergoing or plan to undergo a transition process to the gender that is opposite to the required by the role gender.

The Council is committed to ensuring that potential employees are not unlawfully discriminated against at any stage of the recruitment process. Where there is a genuine occupational requirement for a job to be carried out by a particular sex or gender, this would have to be Equality Impact assessed and rigorously justified under the Equality Act 2010. It would have to be proven that excluding trans or

gender non-conforming people is a proportionate means to achieving a legitimate aim, in which case it will be necessary for the applicant to disclose their status to the panel, unless they have obtained a Gender Recognition Certificate.

If an individual has transitioned prior to joining the Council and has disclosed this, the Council will make no mention of this history. This includes employees selected for promotion or redeployed elsewhere across the Council. This could constitute a criminal offence in the case of an individual who has obtained a Gender Recognition Certificate.

Any documents relating to the applicant's status that are provided during the recruitment and selection process will be considered as strictly confidential. Any such information and data will be treated with absolute discretion between the individual, interview panel and Human Resources.

#### **4.2. Disclosure and Barring Service**

The DBS offers a confidential checking process, which gives applicants undergoing or having undergone transition the choice to have their previous gender or name(s) be disclosed on their DBS Certificate. The options DBS provide cover almost all situations individuals can find themselves in, regarding available ID in the previous or now name and gender.

Please refer to the Council's DBS guidance [here](#) for further information.

#### **4.3. References**

When providing references to a prospective new employer, the reference will be in the name which will be used in the new role. A reference must not disclose a former name. It may sometimes be necessary for a trans person to disclose a previous identity in order for references from past employers to be obtained. In these cases, strict confidentiality and respect for dignity must be applied and information kept secure.

#### **4.4. Work permits**

Employees working for the Council on a work permit are required to comply with any work permit/ visa regulations which may relate specifically to name change or gender reassignment in order that the work permit/ visa continues to be valid.

#### **4.5. National Insurance**

Employees who change their name will need to inform the Department of Works and Pension and HMRC to make appropriate changes to state pension and National Insurance contribution rates.

#### **4.6. Pensions**

A person who undergoes legal transition and obtains a new birth certificate will be treated according to their affirmed gender for pension purposes. Trans people who do not obtain a new birth certificate retain their full pension rights in accordance with the sex that is recorded on their original birth certificate.

#### **4.7. Professional organisation registration**

Where an employee has professional registration with an external organisation, they should contact their professional body to establish if there are any specific requirements in terms of name change. Where LBWF has to keep evidence of professional status or qualifications, this should be discussed with the employee as to how to retain such evidence on file so as not to compromise or breach disclosure of protected information.

### **5. During employment**

The following section outlines the arrangements that will be considered as necessary:

### **5.1. Record keeping**

All records, whether paper or electronic, will be processed in accordance with the requirements of the General Data Protection Regulations and the Data Protection Act 2018. Records must be accurate and only be changed with the permission of the staff member concerned.

A person's preferred name is a first name that is different from their official/ given/ legal name. This is the name they prefer others to use to refer to them, which must be respected—bar official contexts where the legal name is required.

It is good practice for the Council to change name, title and gender on request from an employee who simply provides a formal change of name document such as a deed poll or statutory declaration documentation.

Individuals do not have to present any evidence of any medical treatment nor a Gender Recognition Certificate to request for this to be acknowledged.

Where a trans member is planning to transition, any changes they may wish to make to their records will be discussed as part of a transition plan. For more information, please refer to [Appendix 3: The transition process](#) for further information.

### **5.2. Dress Code**

The Council's [Code of Conduct](#) requires employees to dress accordingly for the role they undertake. Managers are required to apply this rule consistently. However, they should use their discretion and sensitivity when it comes to respecting an individual's gender identity. For instance, some flexibility in dress code may be required to accommodate the needs of a transitioning member of staff.

Uniforms will normally respect health and safety standards and be comfortable for all staff regardless of their gender or sex characteristics. Where staff are required to wear a uniform, they will be permitted to wear the uniform that better reflects their gender identity and expression, while respecting any health and safety standards.

### **5.3. Use of single sex facilities**

Staff are permitted to use any gender defined areas (i.e. 'men only' or 'women only' toilets) that best correspond to their own gender identity and expression, or where they feel more comfortable and safe to do so.

An employee undergoing transition should be granted access to gender defined areas according to the sex in which they permanently present. Under no circumstances should they be expected to use the facilities of their former gender, unless they wish to do so—temporarily or permanently.

The employee and the manager will agree the point at which the employee will start to use the single sex facilities of their acquired gender such as toilets, gym facilities and changing rooms. Where appropriate, colleagues should be informed that the employee will be using the facilities as appropriate to their acquired gender. Employees need to be aware that objecting to sharing toilet facilities with anyone else on account of their protected characteristic (in this case, gender reassignment) will be deemed discriminatory.

It is not appropriate to ask an individual to use separate facilities, such as disabled toilets in the long term. Only where this is consented by the transitioning staff member, this may be a practical and

acceptable short-term option, whilst they are going through the earlier stages of transition or continue to present/ express themselves alternately as both genders, which may be a long-term choice for some trans people.

This provision intends to liberate trans, gender non-conforming, and intersex individuals by enabling them to live their lives as their true selves. The Council believes that this is a modern and balanced approach. However, any misuse or exploitation of the policy may be dealt with in line with the [Conduct and Discipline](#) procedure.

If necessary, employees and managers can contact Human Resources on this.

#### **5.4. Medical time off**

The Equality Act gives protection against less favourable treatment of employees in relation to an absence that is because of their gender reassignment.

The employee may require time off for medical and other treatment. In line with the Council's policy 'Time off for medical appointments and other interventions', employees on sickness absence due to their transitioning or undergoing gender reassignment or surgery will be treated in the same way as any other employee on sickness absence. Time off for surgical procedures is treated in the same way as other scheduled medically necessary procedures.

The same rules apply to any medical treatment an intersex person may be undergoing in relation to the intersex condition whilst employed by the Council.

Please refer to the Council's [Managing Sickness Policy and Procedure](#) for further information.

#### **5.5. Redeployment**

Any employee intending to undergo gender reassignment while employed in a single sex position or environment prior to a change of gender may request redeployment elsewhere in the Council to find suitable alternative vacancies where possible. In these circumstances, redeployment should be discussed as early as possible to allow time to explore this option.

Any redeployment must not result in an employee being placed in a less favourable position than before the transition. For more information on this process, please refer to the Council's Human Resources [Policy for Managing Change](#), Part 3, Redeployment Policy for further information. Human Resources will act in an advisory capacity for the employee and manager throughout the redeployment process.

#### **5.6. Dealing with questions of staff, clients, and the wider community**

Gender and sex characteristics diversity are naturally occurring and gender non-conforming, people transitioning, or intersex people should not be made feel alienated through intrusive questioning.

A sensitive and professional approach to any questions that may be asked is required to ensure that any communications are clear and informative while respecting the individual's circumstances, which are unique.

The Gender Identity Research and Education Society (GIREs) have produced some helpful training tools, which can be found [here](#). For more resources, please refer to [Appendix 4: Sources of information, advice and support](#).

The transition action plan (please refer to [Appendix 3: The transition process](#)) agreed between the manager and the employee will include how colleagues, working partners, and clients are to be informed of the transition—whether the employee wishes to inform colleagues and clients themselves or would they prefer the Council to do this.

Colleagues should be reminded that the employee must be treated with the same respect as any other employee, and this includes being referred to by their new name and their pronoun (for example, ‘she’, ‘he’, ‘they’) at all times.

Strict confidentiality must be maintained. No information must be provided to the media. Any media queries must be addressed in line with corporate requirements.

## **Appendix 1: The legal framework**

### **A. Equality Act 2010 {EA}**

The EA outlaws direct and indirect discrimination, harassment and victimisation in services and public functions, premises, work, education, associations and transport.

For more information, please visit the Council's Equality and Diversity [Intranet page and the Dignity at work: Anti bullying and harassment policy](#) for further information on this.

### **Gender reassignment**

One of the protected characteristics is gender reassignment, it provides for significant protections in relation to recruitment, transfer, training and promotion, access to work-related benefits, facilities and services, dismissal, and any other detriment.

People have the protected characteristic if they are proposing to undergo, are undergoing, or have undergone a process or part of a process to reassign their sex by changing their physiological or other attributes of sex.

Gender reassignment is considered to be a process of moving away from an individual's birth gender to their lived or acquired gender, rather than a medical process.

There is no requirement for a trans person to tell their employer about their gender reassignment status and questions about a possible trans status should not be asked unless one of the exceptions (see below) applies. However, it would be unusual for someone to reach the point of a social transition while in employment without advising their employer.

It is unlawful to refuse to work with someone who is trans even if the refusal is on the grounds of religious belief.

The EA 2010 makes exceptions for certain actions, which would otherwise be discrimination on the grounds of gender reassignment - here are some examples but this is not a comprehensive list:

- The role really requires someone not to be trans - an occupational requirement.
- When positive action is taken to help the employment of a trans person to achieve a more diverse workforce.
- An organisation may indirectly discriminate if the discrimination is a proportionate means of achieving a legitimate aim (objectively justified).

### **Gender identity and intersex condition**

Where there is no intention to undertake 'gender reassignment', the current legislation does not explicitly cover gender variant individuals (for example, non-binary, gender fluid) or intersex people. However, the Council understands these identities and conditions as natural, valid, and meriting protection.

The Act does outlaw discrimination on the grounds of gender reassignment and therefore protects trans people who are not under medical supervision; discrimination by perception to be trans; or by association (for example, a parent of a trans child who is transitioning).

All employees must report any breaches of this policy, whether by colleagues, clients or other third parties, to the appropriate line manager immediately. Individuals who witness an inappropriate

behaviour do not have to identify as gender variant or intersex themselves in order to be offended and entitled to complain.

### **B. Gender Recognition Act 2004**

The Gender Recognition Act allows trans people to obtain a gender recognition certificate to legally change their gender.

It is not necessary for the trans person to obtain legal recognition of their expressed gender to be protected by The Equality Act 2010, but the Gender Recognition Act 2004 allows trans people to gain legal recognition of their acquired gender through registering for a gender recognition certificate. A trans person who obtains a gender recognition certificate (GRC) is considered legally to be her or his\* acquired gender. This binary approach to gender stems from the current legislation, which is expected to be modernised with the recognition of other gender identities.

As a result, an individual holding a GRC may be able to:

- acquire a substitute birth certificate with the acquired gender
- marry in the new gender or form a civil partnership with someone of the same gender under the Civil Partnership Act, and/ or
- retire and receive a state pension at the age appropriate to the acquired gender

The Council should only identify a person's trans status if you have permission to do so. 'Outing' or identifying a person as trans to others without their consent is classed as direct discrimination under the Equality Act 2010 and could result in criminal charges under the Gender Recognition Act 2004.

All employees must report any breaches of this policy, whether by colleagues, clients or other third parties, to the appropriate line manager immediately. Individuals who witness an inappropriate behaviour do not have to identify as gender variant or intersex themselves in order to be offended and entitled to complain.

### **Reform of Gender Recognition Act:**

The UK government, with a consultation that closed in October 2018, has been seeking to reform the Gender Recognition Act with a view to better serve those trans and non-binary individuals who wish to use it. No changes to the Equality Act 2010 were proposed. This reform is expected to modernise and streamline the transition process and extend protections to non-binary people by recognising gender identity in its complexity and fluidity.

### **C. Data Protection Act 2018**

The Data Protection Act respects the rights of individuals when processing their personal information. This is achieved by informing employees about the processing of personal information pertaining to them and by following good data management practices in maintaining and keeping confidential personal data.

More information around the individuals' rights, the lawful bases of processing personal data, and the process in the event of a data breach can be found in the Council's [Data Protection intranet page](#).

Information relating to an individual's trans status and gender reassignment constitute 'sensitive data' ("special category data"), therefore this information cannot be recorded or passed on to another person unless the individual gives their explicit written consent to this processing. Care must also be taken in relation to proxies to gender, for example, binary gender titles.

LBWF must discuss and agree any communication regarding an employee's transition with them before disclosing to any third party, internal or external, to the Council. Recording the sighting of or disclosure of the fact that an employee has obtained a gender recognition certificate is a criminal offence.

#### **D. Human Rights Act 1998**

The Human Rights Act allows you to defend your rights and places a responsibility on public bodies to treat everyone equally, with fairness, dignity and respect. Trans, non-binary, or gender fluid employees must not experience degrading treatment from others and should be free to express their gender identity. The same applies to intersex people.

LBWF need to ensure the principles of fairness, respect, equality, dignity and autonomy underpinned by the Act are applied to everyone.

#### **E. Criminal Justice Act 2003**

Under the above piece of legislation (as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012), offences committed against a person due to their being or being perceived to be trans (for example, physical attacks, verbal abuse, domestic abuse, harassment, damage to property, bullying or graffiti) may be treated as hate crimes and have the respective sentences increased as a result.

## Appendix 2: Gender Identity and Expression and Intersex terminology

Some of these definitions are open to debate especially among those to whom these definitions may be applied. This reflects the fluidity of sexual and gender identities and the importance that marginalised or excluded groups are centred in the process of self-definition and redefinition.

**Acquired gender:** This is the gender in which a person lives and presents to the world. This is not the gender that they were registered with at birth, however it is the gender in which they should be treated. This is the term used in the Gender Recognition Act, and therefore is more appropriately used to describe the acquisition of a Gender Recognition Certificate and new Birth Certificate. See also **affirmed gender**.

**Affirmed gender:** This term may be used when a person has transitioned but may have not applied for a GRC. See also **gender affirmation**.

**Androgynous:** Someone who may possess traits that are simultaneously feminine and masculine or neither. See also **gender non-binary**. See also **pronouns**.

**Cisgender/ Cis:** This term is used to describe a person whose gender identity is congruent with their sex assigned at birth and/ or sexual appearance.

**Cross-dresser:** A person who wears the clothing, accessories and/ or make-up of the gender opposite to the one they were assigned at birth but does not feel the requirement to live permanently in the opposite gender. See also **transvestite**. The term is not synonymous with the term transgender.

**Deadnaming:** Calling someone by their birth name after they have changed their name. This term is often associated with trans people who have changed their name as part of their transition and is potentially offensive or even illegal.

**Genderqueer:** See **gender non-binary** and **queer**.

**Gender affirmation:** The process of bringing one's gender role and appearance into alignment with the gender identity, which 'affirms' that identity. The term 'affirmed' gender is becoming preferred to 'acquired'.

**Gender binary:** Refers to the social construction of a gender dichotomy between masculinity and femininity. The gender binary often ignores or denigrates alternate gender constructions. It also refers to the presumption that someone's sense of identity will be consistent with their sexual/ physical appearance.

**Gender dysphoria:** Gender dysphoria is where a person experiences discomfort or distress because there is a mismatch between their biological sex and their gender identity. For example, some people may have the anatomy associated with men, however identify themselves as a woman, while others may not feel they are definitively either male or female. This mismatch between sex and gender identity can lead to distressing and uncomfortable feelings that are called gender dysphoria.

**Gender essentialism:** The fiercely contested theory that separates people in two distinct categories (sexes) and assumes that people have natural, intrinsic characteristics stemming from their sex. This theory is believed to underpin gender-related stereotypes and biases, while it erases gender non-binary and intersex people. See also **gender binary**.

**Gender expression:** Refers to the manner in which persons represent or express gender to others, often through behaviour, clothing, hairstyles, activities, voice, or mannerisms.

**Gender fluid:** People whose gender identity and expression are not fixed but varies over time in a dynamic manner. They may present as male, female, both or neither. See also **pronouns**.

**Gender identity:** A person has an internal, deeply held sense or knowledge of their own gender. How individuals perceive themselves and how others should recognise them; their innermost concept of self as male, female, a

blend of both or neither. Gender identity can be the same or different from the sex assigned at birth. For trans people, their own sense of who they are does not match the sex that society assigns to them when they are born.

**Gender neutral:** People who reject the idea of gender and may describe themselves as gender neutral, genderless, null-gender, nongender, or agender.

**Gender non-binary:** Someone who feels that their gender identity does not fit within society's gender binary "norm" of being exclusively male or female. This includes persons who identify outside traditional gender categories or identify as both genders. They may self-identify and may describe themselves as non-binary, pan-gender, poly-gender, third gender, genderqueer, or neutrois. They may embrace aspects of binary genders or may identify with neither. Others may consider themselves to be 'third' gender, identify as genderless or agender. See also **pronouns**.

**Gender spectrum:** A range of gender identities between and outside of the categories of masculine/ male and feminine/ female.

**Gender variant:** See **gender non-binary**.

**Gender reassignment:** The Equality and Human Rights Commission advises that the term 'gender reassignment' is outdated or misleading, and the preferred umbrella term is 'trans'. The Council recognises that gender identity is complex and varied (for example, some people identify as genderfluid, gender queer or non-binary), and this will be reflected in our approach. See also **gender affirmation**.

**Gender recognition certificate:** In the UK, people can obtain a gender recognition certificate (GRC), which enables them to get a new accurate birth certificate. The process for applying for a GRC can be quite burdensome and not every transgender person will choose to do so. People do not need a GRC to transition at work or for most official purposes. In order to receive a GRC you must:

- be 18 or over;
- be diagnosed with gender dysphoria (unhappiness with your birth gender);

- have lived as your acquired gender for at least two years;
- intend to live in your acquired gender for the rest of your life;
- apply to the Gender Recognition Panel.

**Gender Recognition Panel:** The Gender Recognition Panel was set up by the Gender Recognition Act 2004 and consists of lawyers and doctors who assess whether an individual is able to satisfy the Act's evidence requirements for the issuing of a Gender Recognition Certificate (GRC). The holder of a full GRC is legally recognised in their acquired gender for all purposes.

**Gender:** Refers to the socially constructed roles, behaviours, activities, and attributes that a given society attaches to femininity or masculinity.

**Intersectionality:** This theory recognises that various aspects of social or political identity can coexist and give rise to various types of discrimination at the same time. For example, the experience of a white trans woman may be different to the one of a black trans woman. Therefore, some Transgender people may experience additional discrimination.

**Intersex:** A general term for a variety of sex characteristics (chromosomes, hormones, organs, anatomy) with which a person is born and that do not fit the typical definitions of female or male.

**LGBTQ+:** Acronym for lesbian, gay bisexual and transgender. 'Q' stands for either queer or questioning or both; LGBTQI includes 'I' for intersex and; LGBTQIA includes 'A' for ally or asexual or both; LGBT+ includes '+' encompassing all forms of gender expressions.

**Outing:** Revealing someone's sexuality or gender identity without their knowledge or consent, which can have a detrimental effect on the individual and even be unlawful.

**Pronouns:** Words we use to refer to people's gender in conversations, for example, 'he' or 'she'. Some trans or non-binary people prefer gender-neutral pronouns such as 'they' or 'ze'.

**Queer:** see **gender non-binary** and **trans/transgender**. Please note that this umbrella term for a non-cisgender and non-heterosexual individual is contested and therefore not accepted by all individuals who it may characterise. This is due to its historically derogatory nature. However, recently, it is being deliberately reclaimed by some branches of the LGBTQ+ community as an acceptable term.

**Sex:** Refers to a person's biology and is generally categorised as male, female, or intersex.

**Sexual identity/ orientation:** Refers to the gender an individual is attracted to in relation to forming sexual and/ or romantic relationships: for example, heterosexual, bisexual, homosexual. This is not the same with gender identity or the intersex condition.

**Trans/ Transgender:** a term describing persons whose gender identity or expression is different from that traditionally associated with the assigned at birth sex. A trans person's gender identity may or may not be binary: for example, a trans woman may identify as 100% woman. As an umbrella term for people whose identity differs from what is typically associated with the sex they were assigned at birth or whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. People under the trans umbrella may describe themselves using one or more of a wide variety of terms, including transgender. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual etc.

**Transgender female:** People who were assigned male at birth however identify and live as a woman may use this term to describe themselves. They may shorten to trans woman. Some may also use MTF, an abbreviation for male-to-female. Some may prefer to simply be

called women, without any modifier. It is best to ask which term an individual prefers.

**Transgender male:** People who were assigned female at birth however identify and live as a man may use this term to describe themselves. They may shorten it to trans man. Some may also use FTM, an abbreviation for female-to-male. Some may prefer to simply be called men, without any modifier. It is best to ask which term an individual prefers.

**Transition/ Transitioning:** This is the process of a person undergoes to match their gender identity. It can be social, medical, and/ or legal but not every person transitioning will choose to undergo all the above or in this order. Examples of transitioning include telling friends, family and colleagues, changing name, asking people to use different pronouns and changing the way their gender is expressed. This may involve medical assistance such as hormone therapy and surgery or may not.

**Transphobia/ transphobic:** Various forms of negativity towards transgender individuals or as a social group and is the irrational hatred, intolerance, dislike and fear of transgender people.

**Transsexual:** Used in the Equality Act 2010 to define those who fall within the definition of people with the protected characteristic of gender reassignment, transsexual is an older term still preferred by some people who have transitioned to live as a different gender than the one society assigns them at birth. An overly clinical term that also focusses on sex rather than gender. Transgender is the preferred term.

**Transvestite:** A term used to describe someone who cross dresses. It is considered a derogatory term by many trans people and is to be avoided unless someone self identifies in this way.

## **Appendix 3: The transition process**

This is the process someone takes to live as the gender which they identify with as opposed to the one they were born with. What this involves varies from individual to individual. Largely speaking, this is a threefold process: social, medical, and legal. However, not every person transitioning will go through all these steps or in this order.

From the above, it should become clear that someone does not need to have undergone surgery or be under any kind of medical supervision to be classed and protected as trans under the Equality Act 2010. When an individual decides to live in their acquired gender, they have made a social transition.

### **A. Social – Medical – Legal Transitions**

This section is intended to illustrate some individuals' transition journey. However, from those trans people who decide to transition, each individual's situation will vary depending on a range of factors, such as whether they are willing to undergo any medical procedures, whether they are receiving medical assistance privately or by the NHS etc.

The first step is usually where a person chooses to assert that their gender identity is not congruent with the identity they were assigned at birth. Each type of transition may include the following.

#### **Social Transition**

- Telling their friends, family, employers and colleagues.
- Changing their gender expression part- or full-time.
- Changing their name, pronouns, and ID documents.
- At the person's request, organisations that hold records change their records to reflect their new name (if appropriate) and gender. For example, with a formal proof of name change, a trans person can request copies of their degrees or qualification certificates in their new name.

#### **Medical Transition**

- Being referred to and being placed on a waiting list for a gender identity clinic. Waiting times can vary and cause issues.
- The person may be diagnosed with gender dysphoria.
- Beginning hormone therapy.
- Being referred for surgery.

#### **Legal Transition**

- A person diagnosed with gender dysphoria can seek to secure legal recognition of transition.
- After 2 years of living in their acquired gender, (whether or not they have undergone surgery) they are able to apply for a Gender Recognition Certificate (GRC).
- If the person meets the requirements, a GRC is awarded and, if they were born in the UK, a new birth certificate is issued.
- The person is now legally recognised in their self-identified gender. Legally, any documents and references that have not already been changed must now be.

## **B. Guidance on Supporting a Person who is Transitioning**

### **a. Disclosure and initial meeting**

As soon as the employee advises their manager of their intention to start a transition or gender reassignment process, a meeting should be organised between the manager and the staff member, who may be accompanied by a Trade Union representative, friend, or family member.

This meeting must be kept confidential and treated with sensitivity. Under no circumstances must any communication or actions be taken without the explicit consent of the individual. These action plans, together with any other notes of meetings and agreed actions, must be kept strictly confidential in the individual's personal file. After a person has successfully transitioned into their new gender role these records should be destroyed. It is the responsibility of the record holder to destroy the records that they have made.

At the meeting, the staff member should be:

- given reassurance that the Council will support them during the transition;
- asked who may need to be informed and at what point;
- explore the **Suggested Template for a Transition Action Plan**.

### **b. Wider, follow-up meeting**

A further meeting can be organised, where (with the person's permission), other relevant people (whose support and cooperation may be necessary) should be invited.

Before this meeting convenes, it might be helpful to send invitees information (such as this guidance and policy and, with the person's permission, a covering note explaining their intention). It is essential that this invitation includes a clear statement about confidentiality and the importance of not discussing the person's transition with anyone else.

### **c. Action plan**

The manager and employee will agree on an action plan around the transition process and any communications to third parties (if applicable). This action plan must be kept confidential and only be held in agreed and secure places.

The action plan should cover:

- Any doctor or specialist appointment dates.
- The date(s) when the individual wishes to commence their transition.
- When and how to inform their colleagues, working partners, and clients.
- Whether any other employee may need information on trans awareness and equality.
- Who will inform the above people (i.e. the person themselves in person or if they would prefer this to be done for them and how it will be achieved)
- Whether the person intends to start hormone therapy and/ or undergo surgery and when.
- Whether the member of staff wishes to stay in their current position or whether they would consider redeployment.
- How disruption to work may be reduced during any absence(s) for surgery and recovery.
- Any changes to records and systems that will be required and when. Please refer to section on **Changing records** below.

### **d. Review**

The action plan should be under regular review and updated as necessary.

### **Changing records**

Trans people who have a full GRC, generally, can request that any reference to their previous gender (and if applicable their previous name) be completely removed from their records. All paper and electronic records held where the person's name and gender are mentioned will be amended or replaced on a date that is agreed with the person. This may include:

- ID passes,
- contact details,
- email addresses,
- formal records,
- website references,
- personnel records,
- payroll details etc.

The transitioning employee will agree the point at which they would like to change their name and present at work in their new gender as part of the action plan, where they will also discuss what changes to records and systems will need to be made.

Employees will be made aware of the categories of staff who can access their records and will be asked to give signed permission for them to do so. As it may be necessary to discuss with others in the organisation that the person is transitioning, the individual will also be asked to give signed permission before their status is discussed with others.

After the employee has transitioned, records relating to the transition will be destroyed and a new personnel file created to ensure confidentiality. Nothing should remain that would disclose to a third person that a change has occurred.

The Gender Recognition Act 2004 does not require the Council to amend records such as the minutes of meetings that predate the individual's transition. However, it would be advisable to consider any publicly available documentation (i.e. committee minutes) and discuss with the individual how to manage any name change that might inadvertently draw the public's attention to their transition.

### C. Suggested Template for a Transition Action Plan

Attach any additional notes.	
Where will this document be kept so that it is secure and remains confidential?	
Who will see this document? (for example: line manager, colleague, mentor, TU rep)	
Date when this document will be destroyed by.	

*Please feel free to adapt this plan as necessary*

<b>Issue to consider</b>	<b>Action to be taken</b>	<b>Who is responsible</b>	<b>When by</b>	<b>Review (if applicable)</b>
Which 'type' of transition (social, medical, legal)?				
The employee's title, pronoun, and name. Consider appropriate amendments to records, systems etc. (for example: preferred name, gender, ID badge, email, intranet, staff directory, voicemail, personnel file and related data)				
Genuine occupational requirements and temporary or permanent changes/ reasonable adjustments to the role to support the employee. Any restrictions that apply.				
Time off required for medical appointments. If any, how will this be managed? (for example: flexible working)				
Timescales for surgery and possible time off work (if applicable or known).				

Contact arrangements during absence.				
Support, information, training on gender identity, trans equality etc. for the individual or colleagues, clients etc.				
Who do I report any incidents to?				
Who knows already and who needs to be informed and how. (for example: friends, colleagues, TU/ clubs/ societies? accommodation? placement)				
Toilets and changing facilities.				
Dress code (for example: uniforms).				
Who else needs to know? (For example: finance, payroll, pensions, banks)				
Required documents.				
Any guidance material that the employee wishes to share with the manager/ colleagues/ Council?				
Anything else?				

Employee's name	
Manager's name	
Date	
Date of review meeting	

## Appendix 4: Sources of information, advice and support

- [ACAS](#): Supporting Trans Employees in the Workplace.
- [All About Transgender](#): Positively changing how the media understands and portrays Transgender people.
- [Beaumont Society](#): A support network that promotes better understanding of the conditions of transgender, transvestism and gender dysphoria.
- [Chrysalis](#) : A Southampton based charity that supports individuals from questioning their gender identity and throughout their transition. They also advise local organisations on supporting individuals to transition in work.
- [Consortium](#): The Consortium of Lesbian, Gay, Bisexual and Transgendered Voluntary and Community Organisations.
- [Depend](#): An organisation that offers free, confidential and non-judgmental advice, information and support to all family members, partners, spouses and friends of trans people.
- [ELOP](#): Lesbian and gay mental health charity based in East London aiming to promote the mental health, wellbeing, empowerment and equality of LGBT communities.
- [Equality and Human Rights Commission](#): A statutory body with responsibility for protecting, enforcing and promoting equality across nine protected characteristics – age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, and sexual orientation.
- [Equality Challenge Unit](#): Supports the Higher Education sector to realise the potential of all staff whatever their race, gender, disability, sexual orientation, religion and belief, or age, to the benefit of those individuals, higher education institutions and society.
- [Foreign Office](#): Lesbian, Gay, Bisexual and Transgender foreign travel advice.
- [Forum](#): For sexual orientation and gender identity equality in post-school education. Established in April 2007 to promote equality and good practice in employment and the provision of post-school education, with a specific focus on sexual orientation and gender identity, or transgender, equality issues.
- [Galop](#): LGBT+ anti-violence charity and national helpline for LGB and Transgender people experiencing domestic violence and family, friends and agencies supporting them.
- [Gender Network](#): Information and support on Transgender and gender issues.
- [Gender Trust](#): Recognised as an authoritative centre for professional people who encounter gender identity-related issues in the course of their work. In particular, this group includes employers, human resources officers, health workers and information services. National helpline: 0845 231 0505.
- [Gendered Intelligence](#): Understanding gender diversity and supporting Transgender young people under the age of 21.
- [GIRES](#): Initiates, promotes and supports research, particularly to address the needs of people who have a strong and ongoing desire to live and be accepted in the gender in which they identify, although different from that assigned at birth.
- [Mermaids UK](#): Provides support and information for children and teenagers who are trying to cope with gender identity issues, and for their families and carers.
- [The National LGB&T Partnership](#): A partnership of various LGBT organisations.
- [NHS](#): Transgender Health information.
- [Press for Change](#): A political lobbying and educational organisation that campaigns to achieve equal civil rights and liberties for all transgender people in the UK through legislation and social change.
- [Sparkle](#): National Transgender charity; annual Transgender event held in July in Manchester.

- [Stonewall](#): The largest LGBT rights organisation in the UK and Europe, named after the 1969 Stonewall riots in the New York City's Greenwich Village.
- [TransBareAll](#): Helping people accept their bodies and live more fulfilling lives.
- [Transgender Zone](#): An online resource that covers all aspects of transgender issues, including a section specifically for female-to-male trans people.
- [UK Government](#): Government Equalities Office.
- [Unison](#): National Officer for LGBT Equality.