

GENDER REASSIGNMENT POLICY

POLICY STATEMENT

- 1 Northumberland County Council is committed to equality and diversity, both in the provision of services and in its role as an employer. It is the Council's intention that all employees have the right to be treated with fairness, dignity, respect and professionalism, and that individuals with gender dysphoria and those who are undergoing or have undergone gender reassignment will receive the same respect and fairness in treatment as any other employee.
- 2 This policy together with the Council's Equality Policy and Equality Objectives sets out how the County Council will meet its duties and requirements in respect of gender equality. This policy aims to assist managers in supporting employees who have either changed their gender identity before joining the Council or, who are changing their gender identity whilst being employed by the Council.

AIMS OF THE POLICY

- 3 This policy aims to:
 - Ensure that transsexual people and individuals undergoing the gender reassignment process are treated with fairness.
 - Provide management guidance on the status of transsexual people undergoing the gender reassignment process.
 - Outline the appropriate procedure to be followed when a transsexual person is a job applicant or is about to undergo the gender reassignment process whilst in employment with the Council.
 - Explain what support should be provided to people undergoing gender reassignment.

APPLICATION OF THE POLICY

- 4 This policy applies to all employees of the County Council, and job applicants.
- 5 Breaches of this policy will be dealt with under the Council's Capability and Disciplinary Procedure. Discrimination may be considered to be gross misconduct and subject to summary dismissal.

RESPONSIBILITY

- 6 The overall responsibility for implementation of this policy lies with the Council's Strategic Management Team. Corporate Directors have responsibility for managing gender equality issues within the Council.
- 7 Heads of Service and managers need 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.
- 8 Heads of Service and managers also have a responsibility to ensure that their employees receive appropriate training and guidance in respect of gender equality and in particular the application in Recruitment and Selection. Equality and diversity is included in the induction training for all new staff. Training on recruitment and selection is available to all Appointing Officers.
- 9 The HR Service is responsible for ensuring the Council's employment related policies are up to date and reflect current legislation and good practice. They also have the responsibility

for ensuring that appropriate training and development programmes are available for employees.

- 10 Every employee has a personal responsibility for their own behaviour and must treat their colleagues with respect and fairness. All employees must act at all times in accordance with the Council's Code of Conduct and any other relevant policies including the Equality and Diversity Policy. This applies to activities undertaken on and off site or any activity associated with their employment with the Council.

WHAT IS GENDER REASSIGNMENT?

- 11 Gender dysphoria or gender identity disorder are two common terms to describe where a person's gender identity does not match their appearance and/or anatomy. People with this medical condition who decide to adopt the opposite gender to the one assigned at birth are known as 'transsexual people'. Medical treatment to enable transsexual people to alter their bodies to match their gender identity is available privately and, in some cases, on the NHS. The process is known medically as 'gender reassignment'. The term 'transsexual' also includes persons living in their new gender, but who have elected for personal reasons not to undergo surgical treatment.
- 12 Both men and women can feel that their assigned birth sex does not match their gender identity and need this to be recognised through either part or full gender reassignment.

WHAT IS GENDER RECOGNITION?

- 13 The Gender Recognition Act 2004 allows transsexual people (who are able to satisfy the necessary evidential requirements) to apply for full legal recognition in their acquired gender. Following a successful application, by issuing them with a Gender Recognition Certificate (GRC), the law regards the transsexual person, for all purposes, as being of their acquired gender. The Act gives legal recognition to transsexual and transgender people and allows them to acquire a new birth certificate, and be able to marry or enter into a civil partnership, as well as affording them full recognition in law for all purposes.
- 14 There is no requirement for a person in possession of a gender recognition certificate to produce this in order to change any official documents other than a birth certificate. The GRC exists only for the Gender Recognition Panel to instruct the Registrar of Births to make a new entry in their register, from which a birth certificate can be drawn. The document states clearly that it has no other purpose. Recording sight of a GRC would automatically lead to a breach of Section 22 of the Gender Recognition Act, since requiring sight of the record by any other person would constitute an unlawful disclosure of protected information.
- 15 The Equality Act 2010 says that it is unlawful for an employer to discriminate against an employee, job applicant or contractor on the grounds of that person's gender reassignment. This covers recruitment, transfer, training and promotion, access to work-related benefits, facilities and services, dismissal, and any other detriment. It is also unlawful for an employer to instruct someone else to do something discriminatory e.g. telling an employment agency not to hire a transsexual person. Pressure to discriminate is also unlawful e.g. employees threatening not to work unless their employer dismisses a colleague who has decided to undergo gender reassignment.

Individuals are protected from discrimination on the grounds that they:

- intend to undergo gender reassignment, or
- are undergoing gender reassignment, or
- have at some time in the past undergone gender reassignment.

- 16 Discrimination in this context means treating a transsexual person less favourably than another job applicant or employee who is not undergoing gender reassignment (or contemplating it etc), this includes harassment and victimisation.
- 17 In certain circumstances it is lawful to discriminate in employment if there is a genuine occupational qualification (GOQ) for doing so. It is essential that if this is contemplated that advice is taken from the HR Service.

DEFINITIONS

- 18 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 attached to the process of self-definition and redefinition.
- **Gender** - the social and cultural identification and perception of masculinity and femininity as opposed to physical/biological sex. Social gender is the gender in which an individual lives their day to day life. This is likely to affect the name they choose to be called by and their dress.
 - **Gender Dysphoria** - the dissatisfaction with one's physical sex (male or female) which is in conflict with one's assigned birth gender. The term is usually restricted to those who seek medical and surgical assistance to resolve their difficulty.
 - **Gender Identity** - gender identity is the personal sense of being a man or a woman, or more rarely both or neither. In this document, the term is primarily used to describe people whose gender identity does not match their assigned sex at birth. However, it is important to note that not everyone identifies exclusively with one sex or the other. Some may well identify as both male and female, while others may identify as male in one setting and female in another.
 - **Sexual Orientation** - the direction of one's sexual interest toward members of the same, opposite, or both sexes.
 - **Transgender** - an inclusive, umbrella term used to describe the diversity of gender identity and gender expression. The term can be used to describe all people who don't identify to the common ideas of gender roles, including transsexuals.
 - **Transsexual** - a term used to describe people who are born with (visible) sex characteristics that are incongruent with their gender identity.
 - **Severe Gender Variance or Transsexualism** - a desire to live and be accepted as a member of the opposite gender often accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to make one's body as congruent as possible with one's preferred sex.
 - **Transphobia** - a fear and dislike of Transgender people, which can lead to hatred resulting in verbal or physical attacks and abuse.
 - **Transvestite** - a person who dresses and acts intermittently in a style or manner traditionally associated with the opposite sex
 - **Real Life Experience** - A person undergoing treatment will begin by receiving specialist medical advice and diagnosis. They will usually be expected to undertake a 'real life experience' (RLE) in which they begin to live and work in the new gender role. At this point they may have records changed to reflect this such as driving licence or passport. Treatment

packages are tailored to the individual but may include hormones, surgery and transition to the gender role.

SUPPORTING EMPLOYEES

- 19 An employee going through the process of gender reassignment can seek support from their line manager, trade union representative, or the Council's Welfare Officer. It is a matter of personal choice as to who is contacted for support; however, it is recommended the relevant line manager will need to be involved so that they can work with the employee to agree an action plan to cover the period of their transition. It is imperative that confidentiality is maintained at all times.
- 20 A transsexual person should be referred to by their new name and gender, including the correct use of pronouns such as him and her.
- 21 It is unlawful to disclose a person's transgendered status without their consent.
- 22 It may be the case that an employee wishes to live full-time in their affirmed gender and name and other records will need to be changed formally. As part of this process they will decide the appropriate point when a form of dress and the use of single sex facilities will be adopted in accord with the new social gender. However, this change in social gender, whilst usually taking place during or after hormone therapy will sometimes occur years before the final surgical procedure. In some cases, there will be no final surgical procedure so it is best practice to discuss these issues with the employee to consider their wishes moving forward.

TRANSITION ACTION PLAN

- 23 The employee concerned and (normally) their line manager or Head of Service should consider writing an action plan together for managing the transition to the opposite gender from the one assigned at birth (see **Appendix 1**). This will include agreeing dates of transition and communication plans, with the manager being guided at all times by the individual's preferences. Under no circumstances should 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. Some of the areas that need to be discussed include:
 - How colleagues should be informed.
 - Any dress codes, uniforms or other related requirements that may need to change
 - Security passes, IT, and personal details changes

USE OF SINGLE SEX FACILITIES

- 24 The action plan should agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to the other. A transsexual employee should not be invited to use the accessible (disabled) toilet facilities unless they do in fact have a disability that requires it, nor facilities of their former gender. The action plan should also consider when an employee who is required to undertake work that impacts on single sex facilities will begin to work to their acquired gender.

MEDIA INTEREST

- 25 Strict confidentiality should be maintained and no information should be provided to the media. Any media queries should be addressed through the Communications Team.

SICKNESS AND ABSENCE

- 26 In putting together the transition action plan, any time off that an employee will need in order to undergo gender reassignment treatment should be discussed. When the individual is absent for treatment or surgery then normal sick pay arrangements or absence arrangements will apply. The normal policy for medical appointments will also apply. Flexibility in terms of taking holiday or rearranging working hours in order to attend medical appointments will be considered. Requests for flexible working that could reasonably be accommodated within the demands of the service should not be refused or be treated less seriously because they are made by a transsexual person.
- 27 Individual rights under the Equality Act 2010 must be considered where the individual has been diagnosed as having 'Gender Dysphoria' or 'Gender Identity Disorder' and the condition is likely to last for more than twelve months, lasted twelve months or will remain with the individual for the rest of their life. In this case the need to make reasonable adjustments will apply.
- 28 Sickness absences from work that are directly related to these conditions should be recorded within the sickness recording system, in the appropriate category. If the employee considers that their condition is, by definition, a disability, then it should be recorded separately as such in the ebusiness system (like any other disability related absence). If absence is recorded as sickness then the normal arrangements relating to the production of a GP Fit Note will apply. However, it does not need to state the procedures performed.
- 29 An individual, going through the gender reassignment process may experience similar personal responses to those associated with any other life-altering condition, which will naturally lead to some individuals experiencing stress. However once the issues are identified and with appropriate support during the gender reassignment process, such problems are usually resolved

CRIMINAL RECORDS CHECKS

- 30 Criminal Records checking agencies have developed separate application procedures, which allow transsexual applicants to exclude previous names from the Disclosure Application form. However, applicants will still be required to send details of their previous identity in a separate letter directly to the 'Sensitive Casework Team'. For further information contact the Disclosure and Barring Service by:
- sending an email to the Disclosure and Barring Service sensitive applications team
 - telephoning 0151 676 1452. There is an answer phone service available for this number where you can leave your name and contact number and a member of the sensitive applications team will call you back.

PRE-EMPLOYMENT

- 31 Individuals who have already adopted their new social gender have no obligation to inform the County Council of their change. Job applicants and interviewees should not be asked their transsexual status.

RECRUITMENT AND SELECTION

- 32 Job applicants and interviewees may not necessarily wish to disclose their transsexual status and this is not a question that should be asked at interview as it is not a relevant criterion in selection. There is no obligation for a transsexual person to disclose their status as a condition of employment. If they choose to disclose, this is not in itself a reason for not offering employment and non-disclosure, or subsequent disclosure, are not grounds for dismissal. Appointing Officers who become aware of an applicant's transsexual status must maintain full confidentiality in relation to this issue.

RECORDS

- 33 Employment related records will only normally be changed when the appropriate deed certificates have been provided (such as a new birth certificate or a statutory declaration of a name change). However changes may be allowed for transsexual employees as part of the transition process. The line manager and HR/Employee Services should advise on where records are maintained that need to be changed. Managers and HR/Employee Services should ensure that all documentation held on an employee's personal file displays their affirmed gender; is secured; and, is only available to designated persons.

REFERENCES

- 34 When providing references to a prospective new employer, the reference should be in the name which will be used in the new job. A reference must not disclose a former name. It may sometimes be necessary for a transsexual 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 should be applied and information kept secure.

BIRTH CERTIFICATES

- 35 Transsexual people are able to obtain a new birth certificate which will not disclose the fact that they changed gender.

WORK PERMITS

- 36 Employees working within the County 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.

NATIONAL INSURANCE

- 37 Employees who change their name will need to inform their local Benefits Office. As part of the Gender Recognition process instructions are issued to the DWP and Inland Revenue to make appropriate changes to state pension and NI contribution rates.

PENSIONS

- 38 A transsexual person who obtains a new birth certificate will be treated according to their affirmed gender for pension purposes. Transsexual 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. In terms of pension provision, it is good practice for employees to be treated as having their birth gender up to the point of transition (i.e. when they start to live fully in the acquired gender) and their affirmed gender from the point of transition. This would apply for example in calculating funds transfers between pension plans.

PROFESSIONAL REGISTRATION

- 39 Where an employee is subject to professional registration they should be advised to contact their professional body to establish if there are any specific requirements in terms of name changes etc. Where the Council 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.

REVIEW

- 40 This policy will be subject to review as required.

Example of Action Plan to support staff

Action Plan to support staff transitioning gender
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? (Considerations should include security aspects such as lone working, night working.)
What is the expected timescale of the medical and surgical procedures, if known?
Is any time off required for medical treatment? If so how will this be managed?
What will the employee's new title and name be?
When do they wish to start using this name and title? Will there be any phasing?
When do they wish to start dressing and presenting as their acquired gender? Again will this be phased? (This may not necessarily be the same date as above.)
When do they wish to start working as their acquired gender? Consider in particular single sex working requirements.
Are there any dress codes which need to be considered? (Do new uniforms need to be ordered?)
When does the employee wish to use toilet and changing facilities appropriate to their acquired gender? Please note accessible (disabled) toilets should not be suggested as an alternative.
When, how and which HR/Employee Services/IT records and or systems will need amending?
When and how should colleagues be informed of the transition? Is there any education material which could be used? If this action plan is not drawn up with input from line manager/and or Human Resources consider how and when they might need to be involved.
If any bullying or harassment occurs how will it be dealt with?
Actions Agreed
Date of next meeting

ADDITIONAL INFORMATION ABOUT GENDER REASSIGNMENT

Data Protection Act 1998 (DPA)

Under the Data Protection Act 1998, gender reassignment would constitute 'sensitive data' for the purposes of the legislation. It can only be processed for certain specified reasons set out in the Act.

Section 8 Asylum and Immigration Act 1996

Since May 2004 a potential employer must see an applicant's proof of identity and right to work in the UK. This includes a UK/EEC passport or a full birth certificate and a P45, P60, National Insurance card or a letter from a Government agency. Some transsexual people may not have any identification documents in their acquired gender, and may have to disclose their transsexual identity. It is therefore important that this information is kept confidential.

What is the legal status of transsexual people?

The Equality Act 2010 allows transsexual people (who are able to satisfy the necessary evidential requirements) to apply for full legal recognition in their acquired gender. Following a successful application the law regards the transsexual person, for all purposes, as being of their acquired sex, they can marry and be provided with a new birth certificate all using the acquired gender.

Record Keeping

All documents, public references (such as telephone directories, prospectuses, web biographies) and employment details should be changed, in agreement with the individual, to reflect their acquired gender. Where documents have been seen and copies taken at the point of starting employment (such as a birth certificate) then the old documents should be destroyed and replaced as new documents become available. (Note it would be a breach of the data protection act to keep out of date documents of such a personal nature on file there must be no disclosure of this previous information). Access to records showing the change of name and any other details associated with the individual's transsexual status, (such as records of absence for medical treatment) must be restricted strictly to staff who need the information to do their work. Breaches of confidentiality will be treated in a serious manner and may result in disciplinary action.

References and certificates

References for transsexual people should be given without hinting that the person has had a change of gender. The action plan should also cover how evidence of professional status or qualifications should be retained on file, if for example the certificates are in the original name.

Pensions

There are a number of alternative ways that an individual's pension history can be dealt with. The Pensions Manager should therefore be contacted to determine the most suitable approach in consultation with the individual. Survivor benefits will be determined by the marriage relationship or civil partnership of the individual as opposed to the individual's legal gender.

National insurance number

The Department of Work and Pensions (DWP) will alter an individual's name on their records and issue a new plastic National Insurance Number Card with that name on it. They don't alter anyone's National Insurance number. There is no gender indication within the number and therefore no point to do so. A change of name on its own does not alter the rest of your national insurance / tax computer records, as an individual will retain their birth gender until they successfully apply for legal recognition and are awarded a new birth certificate. The Gender Recognition process issues instructions to the DWP and Inland Revenue to make appropriate changes at that time.

Driving Licence

The Driver and Vehicle Licensing Agency (DVLA) will change their records of an individual's name and issue them with an updated driving licence on written request. In this case the procedure, which has been used successfully for many years, includes the issue of an amended driver number. The

driver number includes a gender marker. This is updated to show the new gender so that anyone inspecting a driving licence will see a code that reflects the person's new name and the gender they present.

Passports

The process of changing a passport has changed slightly over recent years because of a greater need to prevent fraud. However, the policy of the Passport Agency has always been to facilitate issue of a replacement passport when the applicant has changed their name and social gender role, backed by a letter from a medical professional to confirm that the change is for gender reassignment and intended to be permanent. As the process for any change of photo and details involves an interview it is best for individual's to enquire with their local passport office about what evidence they will need to supply.

Sources of useful information

Equality and Human Rights Commission <http://www.equalityhumanrights.com/advice-and-guidance/your-rights/transgender/transgender-additional-resources/>

Criminal Records Checking <http://www.homeoffice.gov.uk/agencies-public-bodies/crb/>

The Gender Trust www.gendertrust.org.uk/

Men's Health Forum Council www.menshealthforum.org.uk/

Department of Health www.dh.gov.uk

Gender Identity Research and Education Society www.gires.org.uk

Transgender Zone www.transgenderzone.com

Press For Change <http://www.pfc.org.uk/>