



# Supporting Trans Employees Guidance

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## Document summary

This guidance will assist managers in supporting staff who have either changed their gender identity before joining the County Council or, who are changing their gender identity whilst in our employment. It also serves as a resource for trans employees and their colleagues.

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## About this document:

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<p><b>Accessibility help</b></p> <p>Zoom in or out by holding down the CTRL key and turning the mouse wheel. CTRL and click on the table of contents to navigate. Press CTRL and Home key to return to the top of the document Press Alt-left arrow to return to your previous location. References shown in <a href="#">blue text</a> are available on the Intranet and/or Czone. References shown in <a href="#">underlined blue text</a> are hyperlinks to other parts of this document.</p>	

# Supporting Trans Employees Guidance

## Key points

- The County Council has an overall commitment to providing equality and fairness in employment, with all employees being treated with dignity and respect;
- The County Council is committed to ensuring employees do not experience victimisation or discrimination, and to all work environments being free of harassment and bullying;
- Following this guidance will enable effective inclusion of trans people in the workplace.

## 1. Introduction

- 1.1. East Sussex County Council is committed to developing and retaining a skilled, flexible and sustainable workforce from across the whole of society. To achieve this there must be equal opportunities in recruitment, training, development and promotion with discrimination, bullying, harassment and victimisation eradicated in all of its forms.
- 1.2. This document provides guidance at a practical level for managers to confidently engage with, and to enable effective inclusion of, people who may identify as any of the following (although the list is not exhaustive) in the work place:
  - Transgender (TG);
  - Transexual (TS);
  - Trans;
  - Non-gendered;
  - Gender queer;
  - Gender Dysphoric.

For the purposes of this document all of the above will be referred to under the umbrella term of 'trans'. To assist understanding a Guide to Terms can be found at Appendix 1.

- 1.3. Throughout this guidance you will see other useful documents referred to; if shown in [blue](#) text it indicates that those documents are available on the Intranet/Czone.



**Tips:** Throughout this guidance you will find some useful tips & ideas, they are there to help you make the most of the guidance and share in some of our experience.



**Training Information:** Throughout this guidance, there is information directing you to corporate training courses which may help you to develop your practice in specific areas. For more details, please contact the Corporate Training Team on 01323 747102 or via email to

[corporatetraining@eastsussex.gov.uk](mailto:corporatetraining@eastsussex.gov.uk). The Standards and Learning Effectiveness Service provides training for Schools staff. For more details, please refer to the School Management / School Improvement pages of Czone.

## **2. Scope of Guidance**

- 2.1. This guidance applies to all County Council staff. Schools are advised to adopt it as a framework to ensure that they comply with legal obligations and support the inclusion and well-being of trans staff.

## **3. Background**

- 3.1. Most of us are perfectly comfortable with the fact that we are male or female and normally never even think about our gender. There are people though who feel their gender is not quite in harmony with their biological sex. This disharmony varies from mild to extreme but usually results in a great deal of pain and misery for the sufferer. The extreme end of the scale includes men who feel they should have been born women and vice versa but there is a whole spectrum in between. In many cases these people, often referred to as transgender or transsexual, remember feeling this way even in childhood. This feeling can be diagnosed as Gender Dysphoria. When the feeling becomes strong enough, the person may take hormones to bring on characteristics of the opposite sex and seek surgery to alter their external appearance. These extreme measures are accompanied by discomfort and risk and no one undertakes them on a whim.
- 3.2. The term 'transsexual' is not a helpful one as the condition has little to do with sexual orientation, so causes much confusion. The reasons for crossing the gender divide are about just that – gender, not sex. The driving aspiration is to produce a change in attributed gender to that which matches the person's gender identity.
- 3.3. Trans people regularly face prejudice and discrimination because of the way in which they transgress many of the 'norms' of our culture and society. Impact within the field of employment can, in particular, create great difficulties for a trans person, who employers might see as problematic and perhaps best avoided.
- 3.4. Most trans people wish to change their name and personal details and live as a member of the gender with which they identify. This may involve hormone therapy and surgery and this is a process referred to as 'gender reassignment' or 'transitioning'.
- 3.5. There is a common misconception that anyone wishing to undergo gender reassignment is expected to live and work in their new gender role for a minimum period of a year before referral for surgery. This was known as the 'real life experience' (RLE), but is being phased out by different NHS trusts at a locally agreed pace. The individual's experience will therefore vary depending on their treatment route and physical location.
- 3.6. Some people with less common gender identities or gender expressions also face discrimination. This includes people mistakenly perceived to be trans from their physical appearance, people who do not conform to traditional gender stereotypes and societal expectations in terms of their behaviour, interests or appearance and people born with physical intersex conditions.

## 4. The Legal Position

4.1. There are three key pieces of legislation that are in place to protect transgender people:

- The Equality Act 2010;
- The Gender Recognition Act 2004;
- The Human Rights Act 1998.

4.2. The Equality **Act 2010** – protects gender variant, transsexual and transgender people and embraces the 1999 Gender Reassignment Regulations under the Sex Discrimination Act (1975) and the amendment in 2008 which extended provision to goods, facilities, services and premises.

4.2.1. The law in this area may continue to evolve so it is important that the County Council ensures continuity of support for those employees with the protected characteristic of gender reassignment.

4.2.2. The County Council has a general duty to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
- advance equality of opportunity between those who share a relevant protected characteristic and those who do not;
- foster good relations between those who share a relevant protected characteristic and those who do not.

4.2.3. The Act broadens the scope of 'gender reassignment' protection to cover individuals whether or not they are under medical supervision. This protection also covers those who are associated with trans people, such as partners, spouses, other family members or carers, and those perceived to be trans.

4.2.4. People who cross dress are not protected by the Act as they are usually comfortable with the gender they were assigned at birth and do not wish to change it. They would generally cross dress socially and not for gender related reasons.

4.2.5. Good practice will ensure that the spirit, as well as the letter of the law, is embedded in all practices and policies so that trans people can be confident of feeling welcome in their place of work.

4.3. **The Gender Recognition Act 2004** - allows for a trans person to apply for legal recognition in their acquired gender. The Act enables those who have transitioned permanently (after proving that they have been living in their new gender for a period of 2 years) to acquire a Gender Recognition Certificate (GRC). This enables a new birth certificate to be issued confirming their new gender status. In circumstances where a GRC is held there are heightened privacy requirements for documentation or information that reveals a previous gender status. The lack of a GRC must not be used to disadvantage a trans person. Whilst a GRC could be offered by a trans person, it must never be asked for (it may be regarded as harassment), as it negates one of its central purposes, to provide privacy (please see the 'Record Keeping' section of this Guidance for further details). A GRC is not needed to change one's name, pronouns (eg he/she, his/her), or the gender presented at work.

- 4.3.1. Any records that the Council needs to keep that relate to an employee's previous gender, for example relevant qualifications in a previous name, will be kept confidential, with only specified Human Resources staff having access to them. When these records no longer need to be kept, they will be destroyed in line with the appropriate record retention guidelines.
- 4.4. The **Human Rights Act 1998** – is implicit in the legislation mentioned above. This Act too requires trans people to be treated with respect, dignity and fairness and with regard for their need for privacy.



- *An Introduction to the Human Rights Act*

## 5. Supporting employees going through transition

- 5.1. **An employee's responsibilities** – An employee who intends to transition has a responsibility to inform their manager so that adequate support can be provided, but to also ensure that service needs are met accordingly, for example, where there is a need for a Genuine Occupational Qualification (see Guide to Terms at Appendix 1).
- 5.2. **A manager's responsibilities** – The employee's line manager should normally be the first point of contact to ensure that the level of service within the team is maintained to meet operational needs.
- 5.2.1. Additional support may be sought through the:
- LGBT Buddying Scheme (details within the [Mentoring Policy](#));
  - LGBT online staff forum;
  - Staff Counselling Service.
- 5.2.2. The County Council will be supportive of any employee who expresses an intention to transition and will work with them to ensure that the experience at work is as smooth as possible.
- 5.2.3. The line manager and the transitioning employee should write an action plan together for managing the transition at work and it is important that timings within the action plan are led by the employee. This, along with any other notes on the subject, must be kept strictly confidential.
- 5.2.4. The action plan might include:
- Whether the employee is to stay in their current post or be redeployed (see paragraph 5.3);
  - the expected timescale of any medical and/or surgical procedures and the time off required for medical treatment, if known;
  - a flexible working strategy to enable the employee to attend medical appointments, counselling or similar. Please see the [Flexible working directory](#) for further guidance;
  - the expected point or phase of change of name, personal details and social gender;

- whether the employee wishes to inform their managers, colleagues and clients themselves, or would prefer this to be done for them, and whether training or briefing of colleagues or clients will be necessary;
- what amendments will need to be made to records and systems;
- agreeing a procedure for adhering to any dress code;
- agreeing the point at which the individual will commence using single sex facilities in their new gender (such as toilets).

5.3. **Reviewing the job role of a transitioning employee** – It may be helpful to consider relocating a trans person during the initial period of their transition. For example:

- A male to female trans person (trans woman) doing heavy manual work could find that the effects of hormones and, later, gender surgery reduces their body strength;
- the working environment may be stressful for someone experiencing gender transition;
- direct contact with the general public may be stressful during early transition (see 'public facing roles', paragraph 5.8)

5.3.1. Where a single sex Genuine Occupational Requirement applies to a post, a change of job may be required by legislation.

5.4. **Informing colleagues** –The employee and the line manager should agree who will take responsibility for informing colleagues. Whoever is informing colleagues will need to know when the disclosure is to take place and in what detail, so that they can agree and provide appropriate support. No information regarding an employee who is intending to undergo, or is undergoing, gender reassignment can be given to colleagues, or anyone else without that employee's explicit consent.



- *Communication skills for managers*
- *Managing and working transparently*

5.4.1. Education should take place in two ways - general information about trans issues and specific information to enable people to understand the needs of the person involved. At the point of change of gender, it is common for trans people to take a short time off work and return in their new name and gender role. This is often used as an opportunity to inform others.

5.4.2. The disclosure aspect of transitioning is often a source of much anxiety and every effort should be taken to support the employee and colleagues to encourage a positive outcome.

5.4.3. It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender reassignment. This is a private matter since gender reassignment will have no bearing on that person's ability to do their job. Employers should bear in mind that if such an employee is in possession of a gender recognition certificate it is unlawful to disclose their trans status without their consent.

- 5.5. **Time off for treatment** – Legislation does not specify a minimum or maximum time that employers should allow for treatment. While the standard County Council [Attendance Management Procedure](#) will apply, managers should be sensitive to the reason for absence.



*A flexible working strategy, devised between the manager and employee should allow the employee time to attend medical appointments, counselling or similar within working hours. Please see the [Flexible Working Directory](#) for further guidance.*

- 5.5.1. Individual rights under the Equality Act 2010 must be considered where the individual has been diagnosed as suffering from ‘Gender Dysphoria’ or ‘Gender Identity Disorder’ (GID).
- 5.5.2. Managers must not treat a person going through transition any less favourably than they treat, or would treat, a person absent due to illness, or other reason where it would be reasonable to allow a similar amount of time off work.



▪ *Management of Attendance*

- 5.6. **Dress code considerations** – Consideration should be given to what, if any, flexibility may be required to accommodate the transition if there is a dress code applying to the job done by the employee.
- 5.7. **Toilet and cloakroom facilities** – What toilets to use can be an emotive subject but the accepted view is that trans people use the toilets of the gender they are presenting as. Therefore the usual point for starting to use ‘opposite’ gender facilities will be the day the employee starts coming to work in that role. The decision as to which facilities to use will rest with the employee and reflect where they feel most comfortable.
- 5.7.1. It is not appropriate to expect a trans person to use unisex disabled facilities (unless they have a disability requiring this).
- 5.7.2. It is never acceptable to require someone undergoing gender reassignment to use toilets or other facilities designated for members of their birth gender. Under those circumstances the County Council could not guarantee the employee’s safety.
- 5.8. **Public Facing Roles** – A member of staff’s gender transition may be unavoidably visible to the public, especially in the early stages of gender transition. Although many people cease being visibly different as transition progresses, there are others for whom it will continue to be a reality.
- 5.8.1. Some staff may elect to move to another role during transition but they cannot be required to do so. Similarly, the way someone looks and the negative reactions this may elicit from certain members of the public must not be a barrier to recruitment for a public-facing role. In these circumstances it is important that managers support the member of staff in a positive manner and listen to how they feel they are coping.

5.9. **How colleagues can make the transition easier** – All members of staff should try to refer to the trans person by their new name and use pronouns (eg his/her, he/she) as appropriate to their new gender role. In the early days it is only natural that people may occasionally make mistakes and the trans person should be aware that this could happen and be prepared to make reasonable allowances.

5.9.1. Managers must also be aware of the genuine concerns that members of staff may have and resolve any issues quickly. Of course, no matter how much preparation is made and support given, there may still be people who do not understand the situation or are unsympathetic. It is advisable to discuss this in advance with the trans person and agree informally how they would prefer this to be managed. However, if it is thought that a member of staff has acted in a discriminatory way, this will be considered a disciplinary matter and could result in dismissal.



- *Leading Strong Teams*
- *Managing People Effectively*

5.10. **Support mechanisms** – A confidential counselling service is available to all County Council staff and can be accessed by phone on 0800 282 193. The information, advice and counselling service can support all individuals with a wide range of day to day and/or major, life changing events both at home or in the workplace. Where more specialist support is needed by trans staff, the counselling service can also offer signposting via, for instance, GP or local specialist services where available. If you are unsure how the service may be able to help, just call the above number to discuss your situation with a counsellor and find out what they can do.

5.10.1. Should a trans employee experience any instances of bullying and harassment, the County Council's [Grievance Policy](#) explains how such complaints will be dealt with.

## 6. Recruitment and Selection

- 6.1. It should not be expected that applicants and interviewees for posts at the County Council would necessarily wish to disclose their trans status and there is no obligation for them to do so. Disclosure of trans status is not a reason not to make an offer of employment and non-disclosure, or subsequent disclosure, are not grounds for dismissal.
- 6.2. If Personnel and Training are informed of an individual's trans status they will not disclose this to the recruiting manager as this is not relevant information to the selection procedure.
- 6.3. Those working with children and vulnerable adults are likely to have to apply for a Disclosure and Barring Service (DBS) disclosure. Part of this process involves a strict requirement for applicants to state all previous names and aliases. The last page of the form then has to be completed by the "Registered Person" who checks and verifies the contents and the evidence supplied. This means there can be some anxiety about the implications of this for trans applicants and existing employees.

- 6.4. DBS applications need not be a problem for trans people. There is a specific process which they can follow in order to avoid any problems they would otherwise face in complying with the requirement to make truthful statements. This process does not weaken the effectiveness of the process in any way. Further information and more detailed steps are explained on the DBS web site. Applicants may telephone the DBS on 0151 676 1452 to discuss this matter in confidence, or alternatively email DBS at [sensitive@dbsgsi.gov.uk](mailto:sensitive@dbsgsi.gov.uk)
- 6.5. If a request for a reference is received in respect of a previous employee who went through gender re-assignment while employed by ESCC, it should be responded to in the same way as any other reference request. It will be considered a criminal offence if the employee's previous gender identity is disclosed.



## ▪ *Recruitment and Selection*

### **7. Record Keeping**

- 7.1. The Data Protection Act limits the purposes for which information may be kept. When that information is no longer useful it must be destroyed. In some instances it is necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes prior to obtaining gender recognition. However, once a person has obtained a Gender Recognition Certificate (GRC) these must be replaced with new details.
- 7.2. Managers should ensure that all documents, public references (such as telephone directories, website references) and employment details reflect the acquired gender of the individual. This will prevent any breach of confidentiality.
- 7.3. Access to records showing the change of name and any other details associated with an individual's trans status (such as records of absence for medical treatment, or those relating to live warnings for the purposes of instituting an employment tribunal) are restricted to staff who need the information to do their work, such as Personnel and Training staff authorising payments into a pension scheme.
- 7.4. If the County Council becomes aware of information relating to an employee's gender history it will keep this information confidential and will not disclose it to a third party without the employee's consent. Breaches of confidentiality are treated in the same serious manner as disclosure of personal details of any other employee. If it is considered that a member of staff has not followed appropriate guidance, this will be considered a disciplinary matter and could result in dismissal.

### **8. Pensions**

- 8.1. Everyone born after April 1955 now receives state pension at 65. Women born before 1950 can claim state pension at 60. For state pension purposes, trans people have until recently been regarded as the sex recorded at birth. However, a ruling in the European Court of Justice in 2006 states that once male-to-female trans people receive a Gender Recognition Certificate, they must then receive state benefits relating to their age and 'new' gender.

8.2. The effects of this ruling are time limited for future claimants. In 2010, the UK began a 10 year programme to gradually equalise the state retirement benefit age from 60 to 65. This means that from 2020, all women born after 5 April 1955 will have to be 65 to receive their state pension.

## 9. Payroll records

9.1. In most instances Personnel and Training will be able to update an employee's name, title (eg. Mr/Mrs/Ms) and gender record upon request, without this having any impact on their National Insurance Contributions or pensions record. However where an employee is:

- Under the state pension age for women and paying reduced National Insurance Contributions
- Over the state pension age for a woman but below that for a man.

it will be necessary for personnel to take a copy of the employee's new birth certificate or Gender Recognition Certificate before changing their gender record and making the appropriate changes to their national insurance and pensions records. As per paragraph 7 'Record Keeping' above, where a copy of the Gender Recognition Certificate is retained, this will be kept strictly confidential, and restricted to staff who need the information to do their work.

## 10. Further information

GIRES – Gender Identity Research and Education Society

Website: [www.gires.org.uk](http://www.gires.org.uk)

Press for Change – Lobbying and legal support organisation

Website: [www.pfc.org.uk](http://www.pfc.org.uk)

The Gender Trust – Charity helping Trans People and all those affected by gender identity issues

Website: [www.gendertrust.org.uk](http://www.gendertrust.org.uk)

Mermaids – Support for young trans-persons and their families

Website: [www.mermaidsuk.org.uk](http://www.mermaidsuk.org.uk)

NHS – [www.nhs.uk/Livewell/Transhealth/Pages/Transoverview.aspx](http://www.nhs.uk/Livewell/Transhealth/Pages/Transoverview.aspx)

So, someone you know is Transgender? Information booklet by Rachel Russell – available from the Clare Project website – <http://www.clareproject.org.uk/home/support/support-resources>

## **Appendix 1 – Guide to terms**

**Trans** – A generic term generally used by those who identify themselves as Transgender.

**Transgender** – An umbrella term used to include Transsexual and gender variant people.

**Transsexual** – A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex and a wish to have hormonal treatment and surgery to make one's body as congruent as possible with the preferred sex.

**Gender variant** – A synonym for 'trans'. It describes behaviour, expression or identity that does not conform to dominant norms of male and female.

**Transitioning** – This is the process of acquiring a new gender.

**Physical intersex conditions** – occurs when the anatomical sex of a person is ambiguous, and involves having a combination of the physical or chromosomal characteristics of both sexes at birth.

**Gender Dysphoria** – A medical term for the persistent discomfort and/or inability to live as a member of the gender a person was assigned with at birth.

**Gender identity** – Whether a person feels like a man, woman, combination of these or neither.

**Gender Identity Disorder (GID)** – This term is being phased out and much work is being done to prove that this is not a disorder.

**Gender queer** – Someone who uses their gender variance to challenge dominant social categories of male and female.

**Non gendered** – Someone who identifies as neither male or female.

**Gender reassignment** – Medical treatment to enable trans people to alter their bodies to match their gender identity.

**Gender Recognition Certificate (GRC)** – A certificate, issued by a Gender Recognition Panel, denoting that the holder is legally recognised in his or her acquired gender for all purposes.

**Genuine Occupational Qualification (GOQ)** – exists when the nature of a particular job causes the sex or gender of an applicant to become a reasonable cause for choosing one applicant over another.