



Committee: PERSONNEL COMMITTEE

Date: TUESDAY, 23RD JULY 2019

Venue: LANCASTER TOWN HALL

Time: 6.10 P.M., OR AT THE RISE OF JCC, WHICHEVER IS THE LATER

A G E N D A

1. **Apologies for absence**

2. **Minutes**

Minutes of meeting held on 8th July 2019 (previously circulated).

3. **Declarations of Interest**

To receive declarations by Councillors of interests in respect of items on this Agenda.

Councillors are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Whilst not a legal requirement, in accordance with Council Procedure Rule 9 and in the interests of clarity and transparency, Councillors should declare any disclosable pecuniary interests which they have already declared in the Register, at this point in the meeting.

In accordance with Part B Section 2 of the Code Of Conduct, Councillors are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

4. **Items of Urgent Business authorised by the Chair**

5. **Introduction of the Trans Equality Policy**

Report of the Head of Human Resources.

6. **Appointment of a member of the Personnel Committee to the JCC on Health and Safety**

ADMINISTRATIVE ARRANGEMENTS

(i) **Membership**

Councillors Oliver Robinson (Chair), Caroline Jackson (Vice-Chair), Phillip Black, Adrian Duggan, Jake Goodwin, Janice Hanson and Cary Matthews

(ii) Substitute Membership

Councillors Stephie Barber (Substitute), Roger Dennison (Substitute), Debbie Jenkins (Substitute), Mandy King (Substitute), Faye Penny (Substitute) and Joanna Young (Substitute)

(iii) Queries regarding this Agenda

Please contact Stephen Metcalfe, Democratic Services - telephone 01524 582073, or e-mail sjmetcalfe@lancaster.gov.uk.

(iv) Changes to Membership, substitutions or apologies

Please contact Democratic Support, telephone 582170, or alternatively email democraticsupport@lancaster.gov.uk.

KIERAN KEANE,
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Published on Monday, 15th July 2019.

PERSONNEL COMMITTEE**HR TRANSGENDER EQUALITY POLICY****23rd July 2019****Report of the Head of Human Resources****PURPOSE OF REPORT**

To enable the Committee to consider and approve a policy on transgender equality

This report is public.

RECOMMENDATIONS

(1) That subject to any further recommendation being brought to the Committee from the Joint Consultative Committee which meets on 23 July 2019 prior to this meeting, the Committee will approve:

1. Transgender Equality Policy

Introduction

- 1.1 From time to time the Council will review Human Resources policies and procedures.
- 1.2 Any new policies are presented to the Committee for their consideration.

2.0 Transgender Equality Policy

- 2.1 It was agreed during 2018 that a Trans Equality Policy be developed and implemented for the Council. This new policy reflects an approach of support to any transgender members of staff.
- 2.2 The Policy covers areas such as:
 - The Legal Framework surrounding supporting transgender employees
 - Compliance with the Gender Recognition Act 2004
 - Support during the transitioning process
 - Employee records
 - Time off for appointments relating to gender reassignment
 - Absence monitoring and recording
 - Employee reference requests
 - Promotion of transgender equality

Recommendation

The Committee is asked to consider the draft policy document and approve, subject to any additional consultation feedback from the Trade Unions.

RELATIONSHIP TO POLICY FRAMEWORK

The Council is committed to good standards of employment practice, and it is felt that the policy will augment our existing Human Resource Management arrangements.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The policy will apply to all employees.

FINANCIAL IMPLICATIONS

There are no direct implications as a result of this report.

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has been consulted and has no further comments

LEGAL IMPLICATIONS

The policy is compliant with employment legislation and there are no further legal implications directly arising from this report.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Draft Transgender Equality Policy

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Trans Equality Policy

1. Introduction

- 1.1 The Council is committed to equality of opportunity for trans people throughout recruitment and employment, including supporting trans employees through any transitioning process.
- 1.2 The Council will not tolerate discrimination, victimisation or harassment on the basis of a person's gender identity, gender expression or trans status. Lancaster City Council seeks to provide a supportive environment for trans staff
- 1.3 This document should be read in conjunction with the Council's Equality and Diversity Policy, available on Elsie or via line managers (where individuals do not have access to the intranet).
- 1.4 The purpose of this document is to assist managers and trans employees with practical information on workplace support.

2. Definitions

- 2.1 **'Transgender'** or **'Trans'** describes people whose identity differs from their sex assigned at birth. They are umbrella terms covering people who:
 - Are intending to undergo, are undergoing, or have undergone gender reassignment at any stage;
 - Identify as having a gender different from that which they were assigned at birth and are planning or have had medical interventions such as hormones or surgery;
 - Identify as having a gender different from that which they were assigned at birth, but who are not planning any medical intervention; and/or,
 - Are non-binary – that is they are not solely male or female. They may define themselves as both, neither or something entirely different. They may or may not have medical interventions to align their body with their non-binary gender identity.
- 2.2 **'Transitioning'** is the process undertaken by a trans person in order to bring their gender presentation into alignment with their gender identity. This often involves dressing differently, using a different name and pronoun (e.g. she, he or they) and changing official documentation. It may involve various types of medical or surgical treatment, although this is not the case for all trans people.

Lancaster City Council recognises that there is no right or wrong way to transition and is committed to supporting each individual in their decisions. For more relevant terminology please see Appendix 1.

3. Legal Framework

A person does not have to hold a gender recognition certificate or be at any particular stage of transition in order to be treated with dignity and respect. The current legislation and laws in place to protect trans people from discrimination are:

3.1 The Equality Act 2010

The Equality Act 2010 protects people on the basis of gender reassignment from direct and indirect discrimination and harassment. This included discrimination by association and discrimination against people perceived to have the protected characteristic of gender reassignment.

The act also places a proactive duty on public organisations to promote equality of opportunity, foster good relations and eliminate unlawful discrimination between people who have the protected characteristic of gender reassignment and people who do not.

3.2 Gender Recognition Act 2004

The Gender Recognition Act 2004 provides trans people with the opportunity to obtain legal recognition of their acquired gender by being issued with a Gender Recognition Certificate (GRC).

Anyone with a GRC will be legally recognised 'for all purposes' as their acquired gender. When someone has a GRC any disclosure without consent of information about that person's gender history, which has been obtained in an official capacity, is an offence.

Employment rights do not depend on whether a person has a Gender Recognition Certificate. Employers should not ask for a person's GRC and it should never be a pre-condition for transitioning at work. To make an application for a GRC a person needs to show that they have been living and working in that gender for at least two years.

3.3 The Data Protection Act 2018

This act controls how personal information can be processed and used. Trans history is treated as 'sensitive information' under the Data Protection Act.

4. Employees who are transitioning

4.1 If an employee states that they are intending to transition while they are working at the Council, their line manager in conjunction with other appropriate colleagues, should aim to make this process as smooth as possible. Managers should be aware that it can be an extremely difficult step for someone to approach their manager about transitioning.

The Council is committed to reassuring all staff that they will be supported and respected during the transition.

4.2 Communicating the transition with colleagues

The manager and the employee will discuss the individual's preferences in relating to informing others, including other managers, colleagues, service users and other

relevant contacts about the transition. They will agree whether the employee will do this, whether they would prefer the managers or a work colleague to do this, or a mixture of these options. They will also obtain express written agreement from the employee about when and how this will happen, including the details of the message and who it will be shared with. Levels of disclosure may vary in detail for different types of contacts and will be agreed in advance.

4.3 **Uniforms and dress codes**

If a uniform is required for the employee's role, managers will ensure that the trans employee has access to the uniform that is most appropriate at all times. Some trans employees may need access to both the male and female uniforms. Managers will be flexible, and will support the preferences of the trans person wherever possible. Trans staff have the right to comply with any dress codes in a way that reflects their gender identity and gender expression.

4.4 **Changing facilities, toilets and other single sex facilities**

Trans people are entitled to use single sex facilities in accordance with their gender. For non-binary people this might mean using gender-neutral or accessible facilities, or using a combination of different facilities. However, trans people will never be required to use accessible toilets unless they wish to do so.

4.5 **Updating records**

Electronic records will be updated in a timely manner to co-incide with the date on which the workplace transition begins. Care will be taken to ensure that records do not link back to the former name – this may entail creating a whole new email address rather than simply changing the name on an existing one, for instance. The manager and the employee will work together to ensure that nothing is missed. New ID badges with the correct name and a new photograph will be issued.

Paper records will be updated where possible. Those that cannot be updated, for instance paper copies of references relating to the employees recruitment, will be stored securely by the HR Team.

4.6 **Attendance at appointments**

Leave will be given in order for employees to be attend transition related appointments.

Paid leave will not be granted. The majority of staff either benefit from the Flexible Working Hours Scheme or work a compressed week. Additionally, many staff work on a part time basis. All of these working patterns allow employees a great deal of discretion in arranging appointments at a time that will not impact upon their work duties. Additional paid leave therefore will not be granted.

If staff are unable to make appointments in their own time or do not have the benefit of flexi time, in agreement with the line manager, it may be possible for staff to work back the hours within a set time period or to take unpaid leave.

Managers should ensure that, where staff have a transition related appointment, they are flexible with such requests, e.g., permitting annual leave to be taken in hours.

It is acknowledged that employees may need to travel a long distance for appointments, and these may be given at short notice.

4.7 **Absence due to Gender Reassignment Surgery and treatments**

Section 16 of the Equality Act 2010 states that an employer 'must not treat a person absent because of gender reassignment less favourably than they would treat absence due to sickness or injury or absence for some other reason if it is not reasonable to do so.'

The procedure for staff who are absent due to Gender Reassignment will therefore mirror the Council's Sickness Absence Management Procedure, ensuring that contact is maintained throughout the absence, support is given and length of absence is monitored appropriately.

4.8 **Absence Monitoring**

The Bradford factor is used by the Council to monitor absences and absence levels. Absences due to gender reassignment surgery will be counted towards the Bradford factor scores as is the case with those staff who are also covered by the Equality Act in relation to disability.

4.9 **Meetings and Reviews**

In line with the absence procedure, a meeting will take place upon the employees return from gender reassignment surgery. This meeting will focus however on the employee's wellbeing and relevant adjustments that may be temporarily required. This may include consideration of temporary redeployment to another role should this be operationally feasible. A formal review will not take place if this is the only absence which has occurred within the 12 month rolling period.

If a formal review is triggered within the same 12 month period due to absence for other reasons either connected with or unconnected to the initial gender reassignment surgery, managers should give due regard to the non-recurring nature of the gender reassignment surgery itself when setting the target for the future.

4.10 **Absence Recording**

For absence recording purposes Gender Reassignment Surgery and associated procedures will normally be recorded as 'general surgery' and noted as such on the staff HR system Resource Link Aurora by management.

It should be agreed prior to absence if and how the period of absence for the re-assignment surgery will be communicated to colleagues and customers as referred to in section 3.3 and 3.9.

Medical Certificates that are produced due to absence should be sent to Human Resources to be stored confidentially.

4.11 **Transition Plan**

The trans employee and their manager might find it helpful to put in place an action plan, or to agree a checklist to clarify the actions that will be taken over the course of the employee's transition and any absence from work, the dates by which these will be completed, and the person who will take responsibility.

5. Harassment, Bullying and Victimisation

- 5.1 Lancaster City Council has a zero tolerance approach towards discrimination and harassment based on gender identity, gender expression or gender history. Inappropriate behaviour or language may constitute harassment, bullying or victimisation. The Equality Act 2010 gives protection against this.
- 5.2 Managers are responsible for taking timely action where misconduct occurs on the grounds of an employee's gender identity in line with the council's Dignity at Work Policy and procedures. Employees are asked to ensure that any issues are raised with management immediately in order for the relevant action to be taken.

6. Recruitment

People who have already transitioned have no obligation to disclose their gender history. Job applicants and interviewees will not be asked for their gender identity during the recruitment process. It is not normally a relevant criterion in selection. Neither is there any obligation for a trans person to disclose this as a condition of employment.

If a person chooses not to disclose, this is not in itself a reason for not offering employment and a non-disclosure or subsequent disclosure is not grounds for dismissal. Recruiting managers who become aware of a trans applicant will maintain full confidentiality in relation to this.

6.1 References

Where a reference request is received for an existing employee who has transitioned. Lancaster City Council will respect the employee's privacy and only respond using the employee's correct name and gender in the reference, subject to consultation with the employee.

Disclosure of sickness absence will not include time taken off for medical appointments related to transition. This information is strictly confidential and managers must be very careful of any record keeping in this. Sickness absence will only be referred to as 'general surgery'

When Lancaster City Council requests a reference, we will make the request using the prospective employee's correct name and gender since transitioning. We will not mention previous names or gender identity, unless specifically asked to do so by the trans person.

7. Support for employees with a family member who is transitioning

If an employee is supporting a family member who is transitioning, they may need to take time off to attend appointments and treatment or give assistance following surgical procedures. Some of these may be at short notice and may involve travelling short distances.

Managers will be as flexible as possible to accommodate this in line with section 4.7 above.

8. Promotion of Trans Equality

As well as ensuring that trans staff are fully supported the Council will demonstrate our commitment to trans equality in the following ways:

- Ensure that all equality training courses that are delivered are fully inclusive of trans people including the provision of an e learning module on the Council’s Learning Zone on Trans Awareness.
- Include Trans Equality within the Council’s equality agenda and objectives
- Investigate all complaints of harassment, victimisation or discrimination on the grounds of gender identity, gender history, trans status or gender expression in line with Council policy.

9. Review

This policy will be reviewed two years after implementation or earlier in the event of further changes in legislation.

Document Control:

Version no.	Effective Date	Reason	Review due
1.0		New policy – Trans Equality Policy	

Appendix 1 - Trans Terminology

The following terms describe the different terminology in use. If staff are unsure what is the correct gender appropriate pro noun you should ask the person how they wish to be addressed.

If you accidentally use an incorrect pro noun, you should apologise and carry on. Repeated and purposeful use of an incorrect pronoun however can constitute bullying and harassment.

Sex

Sex refers to the male/female/intersex biological development. In an infant, the sex is judged entirely to a person on the basis of primary sex characteristics (genitalia) and reproductive functions at birth.

Intersex

There are a number of intersex conditions (disorders of sex development) which may lead the individuals born with them to experience some inconsistency between their gender identity, and the gender role assigned at birth. Inconsistencies in development may be associated with atypical sex, atypical genital appearance at birth.

Sexual Orientation

This is a person's emotional, romantic and/or sexual attraction to another person

Cisgender

A person whose identity gender is the same as the same as the sex they were assigned at birth.

Gender Identity

Gender identity describes the psychological identification of oneself as a masculine/feminine/both/neither. Gender identity is separate from sexual orientation and or trans people; their own sense of who they are does not match the sex that society assigns them when they are born.

Non - Binary Identity

Some people may experience a gender identity which is both masculine and feminine, different mixtures of both at different times, or neither. Often gender is seen as a binary (meaning two poles man and woman) but there are some individuals who don't self-define as either of these as such they may not use pronouns like 'he' 'she' but rather gender neutral pronouns such as 'they', 'ze' or other identifiers.

Gender Expression

This refers to the ways in which people manifest their gender. For example through what they wear, how they speak and how they act.

Gender Dysphoria

This is used to describe when a person experiences discomfort or distress because there is a mismatch between their sex assigned at birth and their gender identity.