Title

Transsexual, Transgender and Gender Reassignment

Type: Employment Policy

Distribution: All managers and staff via SBCNet

Approved by: Employment & Appeals Committee - 2 October 2007 (to be confirmed)

Issue Date: October 2007 (subject to committee approval)

Review Date: October 2010 or earlier subject to operational needs or legislative requirements

Replaces Policy: New Policy

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1) Introduction

This policy applies to all employees and applicants for employment at Slough Borough Council (SBC).

SBC recognises that understanding and valuing diversity is critical to ensuring success, achieving organisational objectives and improving public trust and confidence. The Council is committed to recruiting, retaining and developing employees from as wide a range of backgrounds as possible.

SBC seeks to attract, recruit and retain people of the highest calibre by applying the principles of fairness, consistency and equality in employment practices and systems. The Council believes that transsexual and transgender employees are entitled to be treated with respect and permitted to perform their jobs free from harassment and unfair discrimination.

This policy sets out how the Council will meet its duty and requirements in transgender equality and legislation and support staff that may be transsexual, transgender or undergoing gender reassignment.

2) Aims

The specific aims of this policy are to:

• Ensure that transsexual people and individuals undergoing the gender reassignment process are treated with fairness and support in their recruitment, employment and career development
• Provide management with guidance on the status of transsexual people undergoing the gender reassignment process
• Detail the appropriate procedure to be followed when a transsexual person applies to the Council following gender reassignment, or states that they are about to undergo the gender reassignment process whilst in the employment of the Council
• Provide details on what support should be provided to individuals undergoing gender reassignment

3) Legislative Framework

In 1996 it was made illegal to discriminate against transsexual people in the workplace. In 1999, gender reassignment surgery was made a legal right on the NHS. In 2000, the European Court of Human Rights established that transsexual people should be afforded legal status in the sex that they live in.

The main legislation is the Gender Recognition Act (GRA) 2004, and the Sex Discrimination Act (SDA) 1975.

The GRA gives legal recognition in their acquired gender to transsexual people who satisfy the Gender Recognition Panel that they:

• have or have had gender dysphoria, and
• have lived in the acquired gender for two years prior to the application, and
• intend to live permanently in the acquired gender.

Please note, although this code of practice refers to transsexual people throughout, it also equally encompassing of transgender people.
The gender recognition process ensures that transsexual people are afforded all the rights and responsibilities appropriate to that gender. In addition the Data Protection Act give protection by ensuring no information is communicated to others.

Managers should bear in mind that if such an individual is in possession of a gender recognition certificate, it is unlawful to disclose their transgender status without their consent.

4) Definitions

A transsexual person is someone who has changed their gender or has indicated their desire to do so. Being transsexual means to identify with the gender of the opposite physical sex. This is not to be confused with transvestism, where a person wears clothing appropriate to the opposite gender.

Transsexuality is not a ‘lifestyle choice’, nor a facet of sexual orientation, nor a disease. It is a medical diagnosis known as gender dysphoria (a consistent and overwhelming desire to live in the opposite gender to that assigned at birth), and must be treated as such.

In order to support and manage successfully a person’s transition from one sex to the other, it is essential that the individual be consulted and involved in discussions about how the process should be handled. Nothing should be done without the consent/knowledge of the individual. Managers should not make assumptions and decisions based on their perception of what is best for the individual. At any meeting held the individual concerned will have the right, if they so require and because of the sensitive nature of the issue, to be accompanied by an external representative.

A transgender person is someone who has a deep conviction that their gender (whether they are a man or a women) does not conform to the sex they were assigned at birth. Most transgender 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. The process is referred to as ‘gender reassignment’ or ‘transitioning’.

5) Supporting transsexual employees going through the gender reassignment process.

5.1 Agreeing a process

A formal written understanding should be agreed between the individual and the Council. This will set out the rights and responsibilities of the person undergoing reassignment and the Council and include a clear route to advice and support from HR, Occupational Health, Employee Counsellor’s, recognised Trade Union or any other knowledgeable source.

5.2 Time required

Transsexual people undergoing medical and surgical procedures related to gender reassignment may require time off from work. The first stage of reassignment, under the supervision of a qualified medical practitioner, may take several months or years. Appointments may be required during normal working time. Following this stage there is typically a period of one or more years before the individual is accepted for reconstructive surgery and the time taken for this will vary greatly from two to around 12 weeks, depending on the nature of the surgery undertaken. There is no specific minimum or maximum time managers should grant to a person undergoing medical and/or surgical treatment related to gender reassignment. The manager should show the same flexibility as for someone undergoing any other serious operation. When the individual is absent for treatment or surgery, then sick pay entitlements should apply.

For individual appointments, employees should follow the normal policy for medical appointments. As a matter of good practice, managers should offer flexibility to individuals
who take annual leave or rearrange working hours in order to attend additional appointments, for example, electrolysis.

Managers should remember that it would constitute unlawful discrimination if they treat an individual undergoing gender reassignment less favourably then someone who is absent for some other medical reason.

5.3 

Long term sickness

Complications may arise as a result of medical treatment for gender reassignment resulting in prolonged incapacity for work. As with any other long-term illness, the individual will be supported and monitored by the manager with advice from Occupational Health and HR. If incapacity continues beyond normal expectations for the process undergone the Council's sickness policy will give guidance to managers on how to proceed. A transsexual employee may be retired on medical grounds (if appropriate), moved to a different role or dismissed in the same way as any other person who becomes unfit for employment.

5.4 

Use of single sex facilities

Part of the discussion process with the individual undergoing gender reassignment will be to agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to the other. An appropriate stage for using the facilities of the employee's new sex is likely to be the change of social gender. Following discussions with the individual, a transsexual person should then be granted access to the relevant facilities. It is not acceptable, in the long term, to expect a transsexual employee to use separate facilities, such as a disabled person's toilet. However, this may be a practical and acceptable short-term option whilst the individual is going through the earlier stages of reassignment.

5.5 Should colleagues, clients and customers be informed?

It should be agreed between the individual and their manager as to whether the individual or the manager will take responsibility for informing whoever needs to know, unless the individual going through the process would prefer to do this. If so, the employer will just need to know when the disclosure is to take place and in what detail, so that they can agree and provide appropriate support. Managers should not inform colleagues, clients and the public that an individual is intending to undergo, or is undergoing, gender reassignment, without the individual's explicit agreement.

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

Education of colleagues and/or clients should take place on two levels. General information about transsexuals and specific information to enable people to understand the needs of the person involved. This education process will normally be undertaken by managers after discussions with and approval of the individual.

At the point of change of gender, it is common for transsexual 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 brief others.

If someone has 'transitioned' prior to joining an employer, the employer should not mention their transsexual history. Indeed, this could constitute a criminal offence in the case of someone who has obtained a gender recognition certificate.
The agreed statement should include the agreed date when the person intends to change their gender role. All personnel records must be updated for the transition. Employers are encouraged to create new records rather than amend old ones, to ensure confidentiality. All data protection principles must be adhered to.

5.6 How should managers handle media interest?

If an individual, whilst at work, is being harassed by the media, the manager in discussion with the individual will consider what strategies could be introduced to try and protect them.

5.7 What other employees can do to make the transition easier?

All employees should try and refer to the transsexual person by their new name and use pronouns appropriate to their new gender role. In the early days, it is only natural that people may occasionally get mixed up and the transsexual person should be aware that this could happen and be prepared to make allowances. Managers must also be aware of the genuine concerns that employees may have, and resolve any issues quickly.

Unfortunately, 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 transsexual person and agree informally how they would prefer this to be managed.

Any incidents of misconduct, harassment, bullying or victimisation should be dealt with quickly and in accordance with the Council’s Dignity at Work or disciplinary procedures.

6) Recruitment

6.1 Recruitment considerations for the employment of transsexual people

In most cases the gender of an individual is of no relevance to their ability to do their job. SBC is committed to the employment, development and promotion of all, regardless of sex, marital status, colour, race, nationality, ethnic/racial/national origins, religious beliefs, disability, age, sexual orientation or gender identity. As such, SBC is committed to ensuring potential employees are not discriminated against in the recruitment process.

6.2 Interviewing and Selection

It should not be expected that applicants and interviewees for employment would necessarily wish to disclose their transsexual status. Many have experienced prejudice and harassment as a result of disclosure. It 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 it, this is not in itself a reason for not offering employment. Moreover, non-disclosure, or subsequent disclosure, is not grounds for dismissal.

Any forms and documents relating to transgender status that are provided during the interview and resulting procedures will be considered confidential and will not be accessible by any one outside of the interview panel, HR and the individual themselves. SBC’s recruitment manual will give guidance on the recruitment and selection procedures.

6.3 What questions can be asked at interview?

Interviewees may not necessarily want to disclose their transsexual status at interview, and it is not a question that should be asked. However, there are certain exceptions when it will be necessary to inform the questioner of their transsexual status. These are:
• If there is a genuine occupational requirement for a job to be carried out by a particular sex
• If the job involves conducting personal searches pursuant to statutory powers
• If the job involves working in 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 would object.

These exceptions will not apply where the individual has obtained a gender recognition certificate.

6.4 What about references and certificates

When a manager is asked for a reference for a transsexual person, he or she must provide it, without hinting that the person has had a change of gender.

If the manager has to keep evidence of professional status or qualifications, he or she should discuss with the individual concerned how to retain such evidence on file – if, for example, certificates are in the individual’s original name – so as not to compromise or breach disclosure of protected information.

7) Employment

7.1 Harassment and Bullying

All employees are entitled to receive equal support and protection from the Council to ensure that they are not victims of harassment and bullying. Reference to SBC’s Dignity at Work Policy will give further guidance.

7.2 Record keeping

The Council will ensure that all documents, public references, such as telephone directories, intranet contacts etc, and employment details reflect the acquired gender of the person. This will prevent any breach of confidentiality.

Where documents have been sent and copies taken at the point of starting employment (such as birth certificate, exam certificates etc), then every effort will be made to replace those with equivalent documents in the new name and gender.

In some instances, however, it may be necessary to retain records relating to an individual’s identity at birth, for example, pension or insurance purposes prior to obtaining gender recognition. However, once a person has obtained a Gender Recognition Certificate, these MUST be replaced with new details.

7.3 Who should have access to the records?

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 to employees who need the information to do their work. They could include people directly involved in the administration of a process, for example, people involved in the pension schemes or management of absence. They do not include colleagues or clients.

Once a person has obtained a Gender Recognition Certificate, there must be no disclosure of this information. Not least because it may be a criminal act subject to a maximum £5000 fine. Breaches of confidentially should be treated in the same serious manner as disclosure of personal details of any other employee.
Transsexual people in employment may choose voluntarily to disclose information at a secondary level, for example, answering an equal opportunities monitoring questionnaire, or asking support from their line manager. Again, strict confidentiality should be observed, as further disclosure must not be made without the express permission of the transsexual person.

8) Disclosure

The GRA defines a person’s application for gender recognition and a person’s gender history as ‘protected information’.

This means that if an employer or employee acquires the information in the course of official duties, it is a criminal offence to disclose it. It is not an offence, however, to disclose ‘protected information’ if the person cannot be identified or if the individual gives consent. However it should be recognised that to even publicly acknowledge that there is a transsexual employee could result in ‘ outing’ them.

Any records held on a transsexual employee in their birth sex and those held on the same person in their acquired gender should be kept confidential, with specified employees having access to them. The DPA limits the purposes for which information may be kept, and when that information is no longer useful it must be destroyed.

9) Conclusion

This code of practice provides guidance to support employees who are transgender / transsexual or undergoing gender reassignment, and the line managers of those staff. The code of practice may not cover every situation that arises, in which case managers should seek further advice from HR and seek to manage all processes in collaboration with the individual.

September 2007