



BRIDGEND COUNTY BOROUGH COUNCIL

CYNGOR BWRDEISTREF SIROL PEN-Y-BONT AR OGWR

GENDER REASSIGNMENT GUIDANCE FOR STAFF

ISSUED: September 2019

CONTENTS

Introduction.....3
Transgender and Gender Reassignment.....3
The Law.....3
Recruitment.....4
Employment.....4
Bullying and Harassment.....5
Dealing with the Transition.....5
The Legal Position.....6
Data Protection GDPR.....6
Equality Act.....7
The Gender Recognition Act 1998.....7
The Human Rights Act 1998.....8

1. Introduction

1.1 The school and council is committed to ensuring that transgender (trans) people are treated with respect and that it does not discriminate unlawfully. This commitment is an important aspect of its overall commitment to providing equal opportunities in employment.

1.2 This policy is intended to assist the school to put this commitment into practice and to help the school, trans people and other employees to deal with any practical issues that may arise. Compliance with this policy should also ensure that employees do not commit unlawful acts of discrimination.

1.3 Striving to ensure that the work environment is free of harassment and bullying and that everyone is treated with dignity and respect is an important aspect of ensuring equal opportunities in employment.

2. Transgender and Gender Reassignment

2.1 Transgender people are those feel that their gender identity does not match that assigned to them. Gender reassignment is the process of changing to the new gender identity. This may involve surgical treatment but some trans people will not undergo surgery for personal reasons, such as age, health and finance. The process of gender reassignment will normally involve a period of at least two years when the trans person must live and work in the gender to which they are reassigning ('real life test') and hormone treatment. If the person decides to undergo, is undergoing or has undergone a process (or part) for the purpose of reassigning their gender by changing physiological or other attributes of gender is protected against discrimination.

3. The Law

3.1 The Gender Recognition Act 2004 allows trans people who have undergone gender reassignment to apply for a gender recognition certificate as of April 2005. When a full gender recognition certificate has been issued, the person is considered in the eyes of the law to be of the acquired gender. There is no obligation on an individual to apply for a gender recognition certificate and there may be good personal reasons, such as an existing marriage, why someone has not applied for one. There are special laws protecting the privacy of someone who has a gender recognition certificate: a person may commit a criminal offence if they disclose information about the gender history of someone with a gender recognition certificate without that person's consent.

3.2 The Equality Act 2010 makes it unlawful to treat someone less favourably than other people because they intend to undergo, is undergoing or has undergone gender assignment. The protection applies whether or not the individual has a gender recognition certificate and whether or not the person has sought medical treatment. Harassment or bullying on grounds of gender reassignment is unlawful discrimination.

3.3 There are some limited exceptions where it is lawful to prevent someone doing a job because of gender assignment, for example where being a man or a woman is a genuine occupational requirement of the job, as set out in the Equality Act 2010, and the employer can show that it is reasonable to prevent the transsexual person from doing the job as a result. The exceptions apply only in rare cases. **The exceptions do not apply to someone with a gender recognition certificate.**

3.4 It is unlawful to victimise someone because they have alleged unlawful discrimination or supported someone to make a complaint or given evidence in relation to a complaint.

3.5 An employee who discriminates against another employee on grounds of gender assignment may be held liable for unlawful discrimination and be required to pay compensation as well as, or instead of, the School and Council.

4. Recruitment

4.1 A job applicant's gender identity status is irrelevant to the recruitment process, except in the rare circumstances where a genuine occupational requirement applies to the job. If the school is relying on a genuine occupational requirement, it will make this clear in the recruitment material. The school and council will not ask questions about gender identity status (unless as part of confidential equality monitoring) and job applicants are not required to volunteer information about it, unless a genuine occupational requirement makes this relevant. A job applicant with a gender recognition certificate is never required to disclose their gender history.

4.2 If during the recruitment process information is disclosed about a job applicant's gender history, for example because certain documents are in a previous name, the school and council will keep the applicant's gender history confidential and will not take this into account in the selection process, unless a genuine occupational requirement makes this relevant. In accordance with its equal opportunities, the School will assess candidates for employment objectively against the requirements that are necessary for the effective performance of the job.

4.3 If disclosure from the Data and Barring Service (DBS) is required as part of the recruitment process, applicants must disclose any previous names and/or gender to the DBS. Tran's applicants may make use of the special application procedure established by the DBS so that their previous name is not disclosed to the school or council.

5. Employment

5.1 It will not normally be necessary for the school and council to be made aware of the gender history of an employee who has undergone gender reassignment. If it becomes aware of information relating to an employee's gender history, it will keep this information confidential. It will not disclose information about an employee's gender history to a third party without the employee's consent. Any records that the

school and 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 staff having access to them. When the school and council no longer needs to keep those records, it will destroy them.

5.2 The school and council will not take account of an employee's gender identity status or history in making employment decisions except where necessary and permitted by law.

5.3 The gender history of an employee with a gender recognition certificate will never be relevant to employment decisions. **An employee with a gender recognition certificate will be treated in accordance with their acquired gender for all employment benefits including pensions and insurance.**

5.4 An employee who has undergone gender assignment but does not have a gender recognition certificate may be required to disclose their gender history for insurance or pension purposes. This information will be passed only to those who required it for these purposes and will be kept confidential.

5.5 The council will make it clear in information about insurance whether the insurance providers require disclosure of gender history. A trans employee has an obligation to disclose necessary information to the insurance council if the council is not aware of the employee's gender history. If the Council is aware of the employee's gender history, the council can supply the information to the insurance company with the employee's consent.

5.6 The council will make it clear in information about the pension scheme what information is required and any implications that gender reassignment has on the pension scheme.

6. Bullying and Harassment

6.1 The school has a separate Dignity at Work policy concerning issues of bullying and harassment on any ground, and how complaints of this type will be dealt with. Disciplinary action will be taken against employees who bully or harass other employees.

7. Dealing with the transition

7.1 The school will be supportive of any employee who expresses an intention to undergo gender reassignment and will work with him/her to try to ensure as smooth a transition at work as possible.

7.2 The school will appoint, in consultation with the employee, a manager to be the employee's principal point of contact. That manager will agree with the employee an action plan for managing the transition at work. Matters to be addressed may include the following.

7.3 The employee's job: Consideration will be given to whether the employee wishes to stay in the same job and location or; if possible, to move post and/or location. In the rare cases where a genuine occupational qualification applies to the post, a change of job may be required.

7.4 Time off: The employee may require time off for medical or other treatment. Time off for these purposes will be treated no less favourably than time off for illness or other medical appointments.

7.5 Change of social gender: Consideration will be given to:

- When the employee expects to change name and to start presenting at work in the new gender;
- How work colleagues and clients are to be informed of the change;
- Whether the employee wishes to inform colleagues and clients of the change or have someone from the School do this;
- What information or training is to be given to managers and work colleagues;
- The point at which the employee will start to use any single-sex facilities, such as toilets, in his their new gender.

7.6 Dress codes: If there is a dress code applying to the job done by the employee consideration will be given to what, if any, flexibility may be required to accommodate the transition.

7.7 Records: Consideration will be given to changes to records and systems that may be needed. After gender reassignment has been completed, records relating to the transition will be destroyed. The school and council will create a new personnel record to ensure confidentiality.

8. The Legal Position

Leading statutory authority

Data Protection Act 1998 as amended by Act 2018 (GDPR)

Equality Act 2010

Human Rights Act 1998

Data Protection Act 1998

Gender Recognition Act 2004

Equal treatment Directive

8.1 Data Protection Act 1998 as amended by Act 2018 (GDPR)

Information about gender reassignment will be 'sensitive data' for the purposes of the Data Protection Act and can be processed only for certain specified reasons set out in the Act.

8.2 Equality Act 2010

The Equality Act 2010 protects individuals against discrimination because of a number of specified protected characteristics, one of which is gender reassignment.

Under the Equality Act 2010, a person who has the protected characteristic of gender reassignment is defined as someone who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. It is no longer necessary for the individual to be under medical supervision or surgery.

The Equality Act 2010 covers the following types of discrimination in relation to gender reassignment.

8.3 Direct discrimination is where a person is treated less favourably than another because of the protected characteristic of gender reassignment.

8.4 Indirect discrimination is where a provision, criterion or practice is applied that is discriminatory in relation to individuals who satisfy the definition of gender reassignment such that it would be to the detriment of people who share that protected characteristic compared with people who do not, and it cannot be shown to be a proportionate means of achieving a legitimate aim.

8.5 Harassment is where there is unwanted conduct, related to the protected characteristics of gender reassignment that has the purpose or effect of violating a person's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment.

8.6 Associative discrimination is where an individual is discriminated against or harassed for association with another individual who falls under the definition of gender reassignment.

8.7 Perceptive discrimination is where an individual is discriminated against harassed based on a perception that he or she has a particular protected characteristic, whether or not he or she does, in fact have that protected characteristic.

8.8 Gender Recognition Act 2004

The Gender Recognition Act 2004, allows transpeople to gain legal recognition in their acquired gender by a process of registration. Once issued with a gender recognition certificate, a transperson is considered in the eyes of the law to be of their acquired gender from the date of issue. It may be a criminal offence to disclose information about a person's gender recognition process without their consent.

8.9 Consequences of legal recognition of a trans person's acquired gender include the ability to:

- Acquire a substitute birth certificate including the acquired gender;
- Marry in the new gender (or form a civil partnership with someone of the same gender under the Civil Partnership Act 2004).
- Retire and receive a State Pension at the age appropriate to the acquired gender.

8.10 The Human Rights Act 1998

The Human Rights Act 1998 may be relevant in interpreting other legislation in a way consistent with rights enshrined in the European Convention on Human Rights or in providing a freestanding right against a public body where Convention rights are infringed. Convention rights that may be of particular relevance are Article 8 (the right to respect for private and family life), Article 10 (freedom of expression) and Article 14 (the right not to be discriminated against in the enjoyment of other Convention rights).