

Corporate Management Team – 27 April 2023

Report of The Chief Executive

Trans and Non-Binary Policy for People Who Use Council Services

Purpose of the report

- 1- This report sets out trans and non-binary policy for people using Council services. The Corporate Management Team is recommended to ratify the policy.

Introduction

- 2- The report sets out a trans and non-binary policy for people who use council services. It forms part of the Council's overall Equality Strategy 2020-2024. The policy has been subject to public consultation which has included Leicester LGBT Centre and the Leicestershire Equalities Challenge Group. The policy has been approved by the Corporate Equalities Board and is presented to Corporate Management Team for ratification.
- 3- There has been rising interest and awareness of trans and non-binary issues. This policy provides a framework for Council officers to address these issues in a manner which is fair, consistent, and transparent.
- 4- The authority has the trans equality policy for staff and there is peer support through the LGBT+ Staff Network. In addition to this, corporate events are facilitated to improve awareness of issues and experiences of trans and non-binary staff and users of services. This policy will complement current corporate initiatives and agenda in the promotion of trans and non-binary equality.

Aim of the policy

- 5- The policy will provide comprehensive information, good practice, and guidance for staff in order to support trans and non-binary people inclusively and effectively by equipping them with the confidence and skills to promote equality diversity, and inclusion. It will generate trust more widely from and with trans and non-binary communities, in particular with people who use Council services, and encourage residents and communities to engage with the authority. The policy also aims to achieve the following:
 - *protect trans and non-binary people who use our services from discriminatory treatment or practices*

- ensure that all people using the Council services are respected, valued, and cared for in a collaborative way that it is sensitive to the needs of each individual.
 - align with the Council's public sector equality duty to actively improve equalities, diversity, and inclusion in services
 - *comply with the broader legal requirements in relation to the protected characteristic of gender reassignment*
 - *raise awareness and promote understanding of trans and non-binary identities among employees*
 - *enable a person's personal data and records (such as change of title, name, gender) to be treated with due confidentiality*
- 6- The policy is based on broad principles of service equality, and welcoming diversity. It does not delve into details around particular services or scenarios. Specific issues will be addressed on a case-by case basis, with this policy as a main reference.

Recommendation

- 7- The Corporate Management Team is recommended to ratify the policy.

Next step

- 8- Full training and guidance will be available to staff part of the implementation process. The policy will be reviewed annually to evaluate its impact and effectiveness.

Officers to contact

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Appendix A

Policy and Guidance on working with Trans and Non-Binary people who use Council Services

1. Introduction

Leicestershire County Council has a strong commitment to equality, diversity, and inclusion in the services it delivers and the support it provides to the people of Leicestershire. This commitment is embodied within our core values, strategic plan, and equality strategy. The Council's strategic plan reflects the Council's four core values and behaviours:

- Positivity
- Trust and Respect
- Openness and Transparency
- Flexibility

The Strategic Plan 2022-26 commits the council to work towards key outcomes. These include creating "Great Communities" where "diversity is celebrated, and people feel safe and included". This reflects the Council's view that everyone deserves to be treated fairly and that people are happier when they can be themselves without fear of discrimination or inequality. The plan also contains the commitment to keep people "Safe and Well": people are safe in their daily lives and those at risk are protected from harm.

The Equality Strategy 2020-2024 and Action Plan show how the council is putting these aspirations into practice. This includes the development of specific policies relating to those who are more likely to experience discrimination or harassment. This policy and guidance relate to those who identify as trans or non-binary. This policy applies to all services delivered by or commissioned by Leicestershire County Council.

2. Purpose of this policy

This policy aims to:

- *protect trans and non-binary people who use our services from discriminatory treatment or practices*
- *support trans and non-binary people and enable them to be always treated with dignity and respect*

- *enable a person's personal data and records (such as change of title, name, gender) to be treated with due confidentiality*
- *comply with the broader legal requirements in relation to the protected characteristic of gender reassignment*
- *raise awareness and promote understanding of trans and non-binary identities among employees*

3. Governance

The Corporate Management Team has responsibility for approving this policy as part of the Council's equalities strategy. The Corporate Equalities Board will co-ordinate implementation of the policy and monitor impact. The policy and guidance will be reviewed every four years. Relevant stakeholders, including the Leicestershire Equalities Challenge Group and the staff LGBT+ network will be engaged as part of this review.

4. Legal framework

The Equality Act 2010

The Equality Act 2010 protects people based on gender reassignment from direct and indirect discrimination and harassment. This includes discrimination by association and discrimination on against people perceived to have the protected characteristic of gender reassignment¹

The Act provides an explanation of who is covered under the gender reassignment protected characteristic. It says a person who "is proposing to undergo, is undergoing, or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

This means anyone who has, is in the process or, or intends to transition. Transitioning is the steps a trans person may take to live in the gender with which they identify. Each person's transition will involve different things. For some this involves medical intervention, such as hormone therapy and surgeries, but not all trans people want or are able to have this. Transitioning also might involve things such as telling friends and family, dressing differently, and changing official documents.

¹ Gender reassignment is the legal term used in the Equality Act. While we use it when referring to legislation, 'gender identity' is a more appropriate, inclusive, and well-understood term. It is normal to use everyday words to describe the law, as everyday language tends to develop along with societal progress, and legal language often remains static.

Discrimination means treating a person less favourably because of their protected characteristic. In the case of trans people, this means treating them less favourably than someone who is not undergoing, or who has not undergone, gender reassignment. This protection applies from the moment at which the person indicates they intend to start the process of gender reassignment.

Indirect discrimination would apply where a workplace provision, criterion or practice that applies equally to everyone puts a trans or non-binary employee at a disproportionate disadvantage when compared to others. One possible example of indirect discrimination might be requiring all staff to wear an ID badge showing the staff member's face as it appeared on the day the staff member joined the Council.

There are certain exceptions under the Equality Act where organisations and services are allowed to treat trans or non-binary individuals differently in terms of access to services for them – including separate and single sex services and the provision of communal accommodation. – only where this is proportionate and can be objectively justified. The exceptions are likely to apply only in exceptional situations and should not be used in any other way.

Harassment

For the purposes of the Equalities Act, harassment refers to unwanted conduct related to a relevant protected characteristic, and which has the effect of violating a protected person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the protected person.

Harassment has a separate definition under criminal legislation (i.e., a course of conduct which amounts to harassment and which a person knows or ought to know amounts to harassment).

More simply however, when the Council refers to harassment in the context of trans or non-binary people, it is referring to situations where a person engages in unwanted conduct such as physical contact, verbal abuse, inappropriate remarks, humour, or innuendo, against another person in relation to their protected characteristic.

The Gender Recognition Act 2004

The Gender Recognition Act 2004 provides trans people with legal recognition of their affirmed gender “for all purposes” including marriage, civil partnership, and registration of death, by enabling them to apply for a Gender Recognition Certificate (GRC). Holders of a GRC also have specific protection in law.

Any disclosure of information by a person who has acquired information in an official capacity about a person's gender history without their consent is a criminal offence. Revealing information about a person's gender reassignment status is commonly known as “outing.” Trans people should not be made to obtain, or feel that they should obtain, a GRC, other than where there is a formal requirement to have one.

UK General Data Protection Regulation (UK GDPR) and The Data Protection Act 2018

Under the UK GDPR and Data Protection Act 2018, personal data can only be legally processed provided it falls under one or more of the six lawful bases. Processing special category data requires an additional lawful basis under Article 9 of the UK GDPR.

Trans and non-binary personal data on its own are not considered special category personal data. However, in some cases gender identity data may constitute special category data, such as where it relates to health data. For this reason, gender reassignment and any information relating to a person's gender history is generally regarded as 'special category data' which can only be lawfully processed under the lawful bases of Article 6 and 9 of the UK GDPR.

Any information processed, asked for and provided must only be used for a clear and specific purpose. It must be accurate and kept up to date, kept for no longer than the purpose to which it relates, and stored securely.

5. Context and key definitions

Understanding Trans

Although there is no precise definition, "Trans" or transgender is a widely accepted umbrella term to describe anyone whose gender identity does not match the gender they were assigned at birth. It includes people at any stage of changing their gender on a permanent basis.

Trans is not a lifestyle choice or imply any specific form of sexual orientation. There is a recognised condition known as 'gender dysphoria.' This is where someone's emotional and psychological identity does not match with their biological sex, causing them anxiety, discomfort, and distress. It can also be described as gender variance. This variance may be manifested in the feeling of being trapped in an uncomfortable or wrong biological body, or experience social expectations or assumptions about how someone should behave based on perceived gender.

Under the current law, where a person over 18 years of age, has been diagnosed with gender dysphoria and has lived in the acquired gender for an appropriate period, they have grounds for making an application for a gender recognition certificate.

Understanding non-binary

At its simplest, non-binary in gender terms means not identifying with biological or socially based categories of male or female. It can also be regarded as a form of trans identity – although not all non-binary people identify as trans – as well as being used as an umbrella term itself covering other, more individual, or self-defined identities such as genderqueer, gender-fluid, pangender, neutrois or agender.

Understanding gender reassignment

To undergo gender reassignment usually means to undergo some sort of medical intervention, but it can also mean changing names, pronouns, dressing differently and living in their self-identified gender. Some people choose to take hormone replacement therapy (which has both physical and emotional effects) or, less commonly, gender confirmation surgery as part of their individual transition but neither of these treatments are essential for a person to identify or be defined as trans.

What trans is not

Being trans or non-binary should not be confused with a person's sexual orientation (who they are attracted to), nor is something that is 'easy' to do or be. An individual's trans journey can take years before, with or without any specific interventions, they feel comfortable with who they are and how others see them. Nor is being trans or non-binary something new – LGBT identities have existed, mostly out of sight, for many years in societies and settings around the world.

Some of the barriers faced by trans and non-binary people

Trans and non-binary people report a range of experiences which may be considered discrimination, prejudice, or harassment. These include:

- *Being ridiculed or mocked for their physical appearance, mannerisms, or attire*
- *Being isolated or ignored by an organisation*
- *Being considered a sexual risk to others simply because they are trans*
- *Being refused a service because other service users might feel uncomfortable*
- *Being consistently misgendered or referred to with the wrong pronouns*
- *Being told that they are not serious about their transition – that it is “just a phase” or they are “dressing up” or “seeking attention”*
- *Having trans status and journey disclosed and discussed by others without consent or compelling cause.*

6. Code of conduct

Staff behaviour

Leicestershire County Council has zero tolerance to any form of discrimination, bullying, harassment, violence or hate crime, and has policies in these areas which are inclusive of trans and non-binary people.

Trans and non-binary people have equal rights to protection from harassment, discrimination, and victimisation as any other people. Staff should treat trans and non-binary people using our services with dignity and respect and act in accordance with the Council's policies and their professional or occupational standards. Providing person-centred and compassionate care is one of the most powerful ways of supporting individuals. It is unacceptable for staff to treat trans or non-binary people

using our services less favourably due to personal, cultural, or religious attitudes or beliefs.

Confidentiality

Details relating to an individual's trans status are confidential and may be classified as one of the special classes of personal data under the UK GDPR. This should only be shared with others with the consent of the individual involved, if the information is relevant to the care provided to the person.

Inappropriate disclosure of information about the gender history of a person using the Council's service with a gender recognition certificate is a criminal offence for which staff members can be subject to a criminal investigation by the Information Commissioner's Office and they can be personally prosecuted. This information can only be disclosed by certain staff in strict circumstances when consent has been sought and the transmission of data is required for the care of the trans person.

Expert advice can be provided by the Council's Information Governance Team.

The Council's guidance for staff includes the following:

- *Use gender neutral language unless you know the person's preferred gender. (For example: start a letter "Dear resident" rather than "Dear Sir/ Madam")*
- *If you do make a mistake apologise, correct yourself and move on. Think about what you can learn from the experience afterwards but do not over-apologise in the moment.*
- *Keep things open –there are a vast range of experiences within the LGBTQ+ community. If something comes up it is okay to say, "I have an understanding of non-binary, but could you tell me a little more about what that means for you?"*

Record keeping

Most documentation and records can easily be changed on request without specific proof being required of a trans person's gender identity. Services that do require a formal document will explain this clearly and sympathetically to service users.

Any records that hold personal details should be changed when service users share their new identity. Records will include systems that may contain names, titles, and other personal identifiers such as photographs.

Facilities

Trans people have equal rights to access single gender toilets or showers as any other person. Consequently, trans people should be able to use the facility appropriate to their identified gender. There may be some circumstances where it is lawful to exclude a trans person from single gender toilets or showers of their identified gender but only

if this proportionate means of achieving another legitimate aim. Any decision to do this must be made on a case-by-case basis following an objective and evidence-based assessment of the circumstances and relevant information.

Working well with trans people's carer and relatives

Some trans people may not have informed family members of their intention to transition. It is therefore important that staff ask people how they would like staff members to work with their family. Staff should not intentionally or unintentionally "out" someone to their family. It may be helpful to refer to the person using our service by their preferred name, as opposed to using pronouns, when speaking with the family and to ensure that all correspondence uses gender neutral pronouns. If the family member or carer of the person using our service does not support the intention to transition, the person using our service' preference should be accepted. It is important for staff, supported by their manager, to explain the Council's position on supporting trans people to family or carers, stating what the Council has legal obligations, whilst remaining sensitive to the way this is explained to the family, showing respect for their perspective and view.

People using our services that have difficulties accepting trans or non-binary people

This may put the trans or non-binary person at risk, so it is important to spend time with the person who has this difficulty so that you can support them to understand the benefits of good inclusive practices and why the Council embraces this. A trans or non-binary person should not be moved solely in response to this enhanced risk, and if it is deemed necessary to move someone, the focus should be on the person exhibiting prejudicial behaviours not the person affected by them. It may also be prudent to begin to help improve awareness and attitudes of people towards trans and non-binary people.

Titles and pronouns

The Council has produced guidelines on the use of gender-inclusive language. This is helpful when addressing all service users – not only trans and non-binary people. The Council will not assume a person's gender identity and will ask for people's titles and pronouns.

7. Support for staff

Support is available for staff who wish to know about this policy and its application from the following resources:

- Your line manager.
- Your Departmental Human Resources Advisor
- The Corporate Policy Team in Chief Executive's Department
- The LGBT+ Staff Network

8. Support groups for service users

Support for service users is available from the following organisations

- [Leicester LGBT+ Centre](#), 15 Wellington Street, Leicester LE1 6HH Email: info@leicesterlgbtcentre.org Tel: 0116 254 7412
- [Stonewall](#)
- [Equality and Human Rights Commission](#)
- [Mermaids](#)

List of Terms

[Stonewall](#) produce a list of terms related to LGBTQ+ issues.