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## Transitioning At Work **Policy**

This document is available in Welsh please see Polisi Trawsnewid Rhywedd yn y Gwaith

**DOCUMENT CONTROL**

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## **1. INTRODUCTION**

The Council is committed to ensuring that transgender 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.

This policy is intended to assist the Council to put this commitment into practice and to help the Council, transgender 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.

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. The Council has a separate Equal Opportunities Policy that deals with these issues.

## **2. TRANSGENDER PEOPLE AND TRANSITIONING**

Transgender/Trans is an umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ), gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, two-spirit, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.

### **Gender reassignment**

Another way of describing a person's transition. 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.

Gender reassignment is a characteristic that is protected by the Equality Act 2010, and it is further interpreted in the Equality Act 2010 approved code of practice. It is a term of much contention, 'gender Identity' (please see below) is what many organisations and groups would like to see in the Equality Act 2010 as it is inclusive to non-binary people to.

### **Gender identity**

A person's innate sense of their own gender, whether male, female or something else (see non-binary below), which may or may not correspond to the sex assigned at birth.

### **3. NON BINARY COLLEAGUES**

Some employees will have a non binary gender identity. Although the law offers limited protection from discrimination for non binary persons, the Council will be supportive of colleagues who identify as non binary. If a colleague discloses they are non binary, the individual's line manager will give consideration to their needs following a discussion with them.

Consideration will be given to, but not restricted to:

- If there is a dress code applying to the job done by the employee, flexibility may be required to accommodate the employee's needs.
- If there are single sex toilet facilities, flexibility may be required to accommodate the employee's needs.
- Whether the employee wishes to inform colleagues and clients of their gender identity.
- What pro-nouns the employee wishes colleagues to use when referring to them.
- What information or training is to be given to managers and work colleagues.

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. Language preference will be respected (Welsh or English) where possible.

The process of transitioning will normally involve the employee living and working in the gender to which they are transitioning.

If the person decides to undergo surgery, they will need to undertake the social gender role transition. This was previously referred to as the real life test and usually involves living in their preferred gender identity full time for at least a year. This is a requirement from the NHS, Gender Identity Clinic process and NOT something RCT Council is putting in place.

Any person who proposes 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.

#### 4. THE LAW

The Gender Recognition Act 2004 allows transgender people who have undergone the transition from one gender to the other 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 valid 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.

The Equality Act 2010 makes it unlawful to treat someone less favorably than other people because they intend to undergo, are undergoing or have undergone the transition from the gender assigned to them at birth to their preferred gender. The law refers to this currently as gender reassignment but many people from the Transgender Community consider this term to be outdated and overly medical in nature. 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 the grounds of gender reassignment is unlawful discrimination.

Non binary is an umbrella term for a person who does not identify as only male or only female, or who may identify as both. Usually this is different to being transgender (although there are some people who identify as both transgender and non binary) and going through a transition from one gender to the other. Currently the Equality Act does not include non binary as a protected characteristic. Despite this the Council aims for an inclusive culture and believes that its employees who have a non binary gender identity should be supported and treated with respect.

There are some limited exceptions where it is lawful to prevent someone doing a job because of gender reassignment, for example where being a man or a woman is a genuine occupational requirement for the job, as set out in the Equality Act 2010, and the employer can show that it is reasonable to prevent the transgender 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.**

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.

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

## **5. RECRUITMENT**

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 Council is relying on a genuine occupational requirement, it will make this clear in the recruitment material. The 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 his/her gender history.

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 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 Policy, the Council will assess candidates for employment objectively against the requirements that are necessary for the effective performance of the job.

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

## **6. EMPLOYMENT**

It will not normally be necessary for the Council to be made aware of the gender history of an employee who has undergone the transition from one gender to the other. 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 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 Council no longer needs to keep those records, it will destroy them.

The 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.

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.**

An employee who has undergone Gender Reassignment 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 people who require it for these purposes and will be kept confidential.

The Council will make it clear in information about insurance whether the insurance providers require disclosure of gender history. In limited circumstances a transgender employee has an obligation to disclose necessary information for Council insurance policies. This only applies if the Council is not aware of the employee's gender history and this is a requirement of the insurance provider. 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.

The Council will make it clear in information about the pension scheme what information is required and any implications that transitioning has on the pension scheme.

## **7. BULLYING AND HARASSMENT**

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

## **8. ASSISTING WITH THE TRANSITION**

The Council will be supportive of any employee who expresses an intention to transition and will work with them to try to ensure as smooth a transition at work as possible.

The Council will appoint, in consultation with the employee and if they chose to, 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:

**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.

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

**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 Council 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 their new gender;
- what pro-nouns the employee wishes colleagues to use when referring to them.
- Consideration will be given to employees language preference (Welsh or English) when sharing information to help and support staff with the appropriate language during transition.

**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.

**Records:** Consideration will be given to changes to records and systems that may be needed. After the transition has been completed, records relating to the transition will be destroyed. The Council will create a new personnel record to ensure confidentiality ensuring that language preference (Welsh or English) is recorded during this process.

## **9. THE LEGAL POSITION**

### ***Leading statutory authority***

Equality Act 2010

Human Rights Act 1998

Data Protection Act 1998

Gender Recognition Act 2004

Equal Treatment Directive 76/207/EC as amended by Directive 2002/73/EC

## 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. Members of the Transgender Community are currently campaigning for the protected characteristic to be changed to gender identity which is considered to be a further ranging and inclusive term, so the law may reflect this in the future.

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 have surgery.

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

- **Direct discrimination** is where a person is treated less favorably than another because of the protected characteristic of gender reassignment. An example of direct gender reassignment discrimination would be refusing to employ a person because they are undergoing surgery to become a woman. There is a limited exception where it is lawful to prevent someone doing a job because of gender reassignment (going through the transition), for example where not being a transgender person is an occupational requirement for the job, and the employer can demonstrate that it is a proportionate means of achieving a legitimate aim. This exception does not apply to someone with a gender recognition certificate.
- **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 (transitioning) 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. For example, where a person is undergoing surgery to become a man and the medication causes fatigue, but the employer introduces a new shift pattern that requires fewer days of work but longer shifts, it might be that the employee is unable to work longer hours. Consequently, the new shift pattern puts the employee at a substantial disadvantage. This will amount to indirect discrimination unless an employer can objectively justify the new shift pattern.
- **Harassment** is where there is unwanted conduct, related to the protected characteristic 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. For example, an individual may be subjected to insulting and humiliating comments from her line manager because they are a person living permanently as a man following

transitioning. That individual can bring a claim for harassment related to the protected characteristic of gender reassignment (transitioning). In addition, if that individual's office colleague is also present when these comments are made, even though they are not directed at him or her, they may also bring a claim for harassment related to gender reassignment as the line manager is creating an offensive environment. It does not matter whether or not this effect was intended by the person responsible for the conduct.

- **Associative discrimination** is where an individual is discriminated against or harassed because of association with another individual who falls under the definition of gender reassignment. For example, if an employer denies an employee a promotion because they are living with a partner who is undergoing surgery to become a woman that would amount to associative discrimination as gender reassignment is a protected characteristic. Similarly, if an employer harasses an employee because their sister has transitioned to be male, that would be unlawful as associative harassment related to gender reassignment (transitioning).
- **Perceptive discrimination** is where an individual is discriminated against or harassed based on a perception that they have a particular protected characteristic, whether or not they do, in fact, have that protected characteristic. For example, a line manager may believe that a male employee is transitioning, when in fact he is a transvestite (transvestites are not protected under the Act as there is no intention to live permanently as a woman). If the company does not allow him to make presentations to clients because their line manager thinks they may make clients uncomfortable, the employee has been discriminated against because of a perception of the protected characteristic of gender reassignment. Similarly, where colleagues ridicule and tease a female employee because they believe that she was once a man, this would be unlawful as perceptive harassment related to gender reassignment, even though she may always have been a woman.

### **The Gender Recognition Act 2004**

The Gender Recognition Act 2004, allows transgender people to gain legal recognition in their acquired gender by a process of registration. Once issued with a gender recognition certificate, a transgender person is considered in the eyes of the law to be 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.

Consequences of legal recognition of a transgender 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.

## **Exceptions**

There are limited exceptions where the Equality Act 2010 permits discrimination against someone on the grounds of gender reassignment (transitioning). These are:

- where being of a particular sex is a genuine occupational requirement for the job as set out in the Equality Act 2010 and the employer can show that it is reasonable to prevent the transgender person from doing the job as a result;
- if the job involves conducting intimate searches pursuant to statutory powers, such as the Police and Criminal Evidence Act 1984; or
- 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 reasonably object to the job holder being someone who was undergoing or had undergone the transition from one gender to the other.

There are also some temporary exceptions that apply to someone who intends to transition or is undergoing the transition but not to someone who has transitioned. These temporary exceptions apply:

- where the employee needs to live on premises provided by the employer, reasonable objection could be taken on grounds of privacy and decency to sharing accommodation and facilities, and it is not reasonable to expect the employer either to equip the premises with suitable accommodation or to make alternative arrangements;
- where the employee provides vulnerable individuals with personal services promoting their welfare, or similar personal services, and in the reasonable view of the employer those services cannot be effectively provided by a person whilst that person is undergoing gender reassignment.

**None of these exceptions apply to someone with a gender recognition certificate, who is to be treated as being of his or her acquired gender.**

There is a special exception that may be relied on by organised religions where there are genuine reasons not to employ a transgender person, whether or not that person has a gender recognition certificate.

## **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).

## **Data Protection Act 1998**

Information about being transgender and transitioning will be 'sensitive data' for the purposes of the Data Protection Act 1998 and can be processed only for certain specified reasons set out in the Act.

## **10. ADVICE AND GUIDANCE**

This document is only a general guide. If you wish for more detailed information about this or other Council policies in respect of Equality and Diversity, please contact the Equality & Diversity Manager or Adviser.

## **11. GLOSSARY OF TERMS**

### **Ally**

A (typically) straight and/or cis person who supports members of the LGBT community.

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### **Asexual (or ace)**

Someone who does not experience sexual attraction.

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### **Bi**

Bi is an umbrella term used to describe an emotional, romantic and/or sexual orientation towards more than one gender.

Bi people may describe themselves using one or more of a wide variety of terms, including, but not limited to, bisexual, pan, bi-curious, queer, and other non-monosexual identities.

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### **Biphobia**

The fear or dislike of someone who identifies as bi based on prejudice or negative attitudes, beliefs or views about bi people. Biphobic bullying may be targeted at

people who are, or who are perceived to be, bi.

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### **Cisgender or Cis**

Someone whose gender identity is the same as the sex they were assigned at birth. Non-trans is also used by some people.

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### **Coming out**

When a person first tells someone/others about their identity as lesbian, gay, bi or trans.

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### **Deadnaming**

Calling someone by their birth name after they have changed their name. This term is often associated with trans people who have changed their name as part of their transition.

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### **Gay**

Refers to a man who has an emotional, romantic and/or sexual orientation towards men. Also a generic term for lesbian and gay sexuality - some women define themselves as gay rather than lesbian.

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### **Gender**

Often expressed in terms of masculinity and femininity, gender is largely culturally determined and is assumed from the sex assigned at birth.

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### **Gender dysphoria**

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. This is also the clinical diagnosis for someone who doesn't feel comfortable with the gender they were assigned at birth.

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### **Gender expression**

How a person chooses to outwardly express their gender, within the context of societal expectations of gender. A person who does not confirm to societal expectations of gender may not, however, identify as trans.

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### **Gender identity**

A person's innate sense of their own gender, whether male, female or something else (see non-binary below), which may or may not correspond to the sex

assigned at birth.

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### **Gender reassignment**

Another way of describing a person's transition. 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.

Gender reassignment is a characteristic that is protected by the Equality Act 2010, and it is further interpreted in the Equality Act 2010 approved code of practice. It is a term of much contention and is one that Stonewall's [Trans Advisory Group](#) feels should be reviewed.

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### **Gender Recognition Certificate (GRC)**

This enables trans people to be legally recognised in their affirmed gender and to be issued with a new birth certificate. Not all trans people will apply for a GRC and you currently have to be over 18 to apply.

You do not need a GRC to change your gender markers at work or to legally change your gender on other documents such as your passport.

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### **Gillick competence**

A term used in medical law to decide whether a child (under 16 years of age) is able to consent to his or her own medical treatment, without the need for parental permission or knowledge.

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### **Heterosexual / straight**

Refers to a man who has an emotional, romantic and/or sexual orientation towards women or to a woman who has an emotional, romantic and/or sexual orientation towards men.

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### **Homosexual**

This might be considered a more medical term used to describe someone who has an emotional romantic and/or sexual orientation towards someone of the same gender. The term 'gay' is now more generally used.

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### **Homophobia**

The fear or dislike of someone, based on prejudice or negative attitudes, beliefs or views about lesbian, gay or bi people. Homophobic bullying may be targeted at people who are, or who are perceived to be, lesbian, gay or bi.

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**Intersex**

A term used to describe a person who may have the biological attributes of both sexes or whose biological attributes do not fit with societal assumptions about what constitutes male or female.

Intersex people may identify as male, female or non-binary.

Stonewall works with intersex groups to provide its partners and stakeholders information and evidence about areas of disadvantage experienced by intersex people but does not, after discussions with members of the intersex community, include intersex issues as part of its current remit at this stage.

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**LGBT**

The acronym for lesbian, gay, bi and trans.

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**Lesbian**

Refers to a woman who has an emotional, romantic and/or sexual orientation towards women.

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**Neurodiverse**

A concept where neurological differences are recognised and respected in the same way as any other human difference.

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**Non-binary**

An umbrella term for people whose gender identity doesn't sit comfortably with 'man' or 'woman'. Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely.

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**Outed**

When a lesbian, gay, bi or trans person's sexual orientation or gender identity is disclosed to someone else without their consent.

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**Person with a trans history**

Someone who identifies as male or female or a man or woman, but was assigned differently at birth. This is increasingly used by people to acknowledge a trans past.

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**Pan**

Refers to a person whose emotional, romantic and/or sexual attraction towards others is not limited by sex or gender.

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**Passing**

If someone is regarded, at a glance, to be a cisgender man or cisgender woman. Cisgender refers to someone whose gender identity matches the sex they were 'assigned' at birth. This might include physical gender cues (hair or clothing) and/or behaviour which is historically or culturally associated with a particular gender.

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**Pronoun**

Words we use to refer to people's gender in conversation - for example, 'he' or 'she'. Some people may prefer others to refer to them in gender neutral language and use pronouns such as they/their and ze/zir.

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**Queer**

In the past a derogatory term for LGBT individuals. The term has now been reclaimed by LGBT young people in particular who don't identify with traditional categories around gender identity and sexual orientation but is still viewed to be derogatory by some.

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**Questioning**

The process of exploring your own sexual orientation and/or gender identity.

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**Sex**

Assigned to a person on the basis of primary sex characteristics (genitalia) and reproductive functions. Sometimes the terms 'sex' and 'gender' are interchanged to mean 'male' or 'female'.

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**Sexual orientation**

A person's emotional, romantic and/or sexual attraction to another person.

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**Trans**

An umbrella term to describe people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth.

Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer (GQ),

gender-fluid, non-binary, gender-variant, crossdresser, genderless, agender, nongender, third gender, two-spirit, bi-gender, trans man, trans woman, trans masculine, trans feminine and neutrois.

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### **Transgender man**

A term used to describe someone who is assigned female at birth but identifies and lives as a man. This may be shortened to trans man, or FTM, an abbreviation for female-to-male.

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### **Transgender woman**

A term used to describe someone who is assigned male at birth but identifies and lives as a woman. This may be shortened to trans woman, or MTF, an abbreviation for male-to-female.

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### **Transitioning**

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.

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### **Transphobia**

The fear or dislike of someone based on the fact they are trans, including the denial/refusal to accept their gender identity.

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### **Transsexual**

This was used in the past as a more medical term (similarly to homosexual) to refer to someone who transitioned to live in the 'opposite' gender to the one assigned at birth.

This term is still used by some although many people prefer the term trans or transgender.