WPG NI Response Local Government Staffing Commission (LGSC) Trans Equality Policy

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1. Introduction:

The Women's Policy Group (WPG) is a group of policy experts and practitioners who advocate collectively for women and girls by promoting gender equality through an intersectional feminist lens. We challenge systemic injustice and discrimination affecting women and girls by informing society and influencing policy and law. Our work is informed by women and girls' lived experiences and rooted in international human rights law.

The WPG is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBTQ+ organisations, migrant groups, support service providers, NGOs, human rights and equality organisations and individuals. Over the years this important network has ensured there is good communication between politicians, policy makers and women's organisations on the ground. The WPG is endorsed as a coalition of expert voices that advocates for women in Northern Ireland on a policy level.

If you have any questions or queries about this response, or would like to discuss this evidence further with the WPG, please contact Elaine Crory, Women's Sector Lobbyist at elaine.crory@wrda.net

This response was prepared by the following WPG members:

- Elaine Crory – Women's Resource and Development Agency
- Aoife Mallon - Women's Resource and Development Agency
- Sophie Nelson - HERe NI
- Jonna Monaghan - Women's Platform
- Naomi Connor - Alliance for Choice

Please note that this response also includes evidence from other WPG work, compiled by a range of WPG members, and not all member organisations have specific policy positions on all the areas covered in this response.

1.1 Endorsements

The WPG would like to endorse the response submitted to this call for evidence by HERe NI which is the charity for lesbian and bisexual women in the LGBTQIA+ sector.

2. Past Consultations Responses, Evidence Submissions and Briefings:

The WPG has published a wide range of evidence through various evidence submissions, public consultation responses and specific briefings on issues relating to trans equality. In 2021, the WPG wrote to all political parties in Northern Ireland

emphasising our support for trans women and reiterating the trans-inclusive stance of the women's sector. These letters included:

- September 2021: WPG letter to UUP Party leader in support of trans women: https://wrda.net/wp-content/uploads/2021/09/UUP-WPG-Letter-in-Support-of-Trans-Women-22-Sept-2021.pdf

- September 2021: WPG letter to Sinn Féin Party Leader in Support of trans women: https://wrda.net/wp-content/uploads/2021/09/Sinn-Fein-WPG-Letter-in-Support-of-Trans-Women-22-Sept-2021.pdf

- September 2021: WPG letter to SDLP Party Leader in support of trans women: https://wrda.net/wp-content/uploads/2021/09/SDLP-WPG-Letter-in-Support-of-Trans-Women-22-Sept-2021.pdf

- September 2021: WPG letter to Green Party Leader in support of trans women: https://wrda.net/wp-content/uploads/2021/09/Green-Party-NI-WPG-Letter-in-Support-of-Trans-Women-22-Sept-2021.pdf

- September 2021: WPG letter to DUP Party Leader in support of trans women: https://wrda.net/wp-content/uploads/2021/09/DUP-WPG-Letter-in-Support-of-Trans-Women-22-Sept-2021.pdf

- September 2021: WPG letter to Alliance Party Leader in support of trans women: https://wrda.net/wp-content/uploads/2021/09/Alliance-WPG-Letter-in-Support-of-Trans-Women-22-Sept-2021.pdf

In 2020, WRDA also published a Statement on Trans Women and Non-binary people:

- WRDA Position on the inclusion of trans women and non-binary people: https://wrda.net/wp-content/uploads/2020/12/WRDA-Position-on-Trans-Inclusion-Dec-2020.pdf

3. General Comments on the LGSC Trans Equality Policy Consultation

The Women's Policy Group welcomes this draft Trans Equality Policy by the Local Government Staffing Commission (LGSC). The women's sector in Northern Ireland is trans-inclusive and united in its opposition to transphobia in all its forms. We are keen to support and work with organisations who are taking steps to implement trans-inclusive policies and welcome this opportunity to engage the LGSC. This is a very positive move for all local government staff and we commend the approach taken.

The International Labour Organization (ILO) explicitly states that 'LGBT workers are equally entitled to the right to be free from discrimination at work'[1], and has introduced learning guides[2] and other initiatives to promote equality in the workplace. The UN Special Rapporteur in the field of cultural rights and the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity have also recently published a policy position[3] which stresses that LGBTQIA+ persons have access to all fundamental human rights, including socio-economic rights such as the right to work, and calls on all UN member states to ensure that these rights are upheld.

The Convention on the Elimination on All Forms of Discrimination against Women (CEDAW)[4] underlines the full and equal rights of women as well as men to all human rights including employment and social protection, and the CEDAW Committee in 2022 judged that Sri Lanka had violated a number of the Convention's provisions in its treatment of LGBTQIA+ individuals[5]. At European level, the Council of Europe has set out clear standards for legal recognition, right to privacy and in relation to LGBTQIA+ persons.[6]. An overview of jurisprudence by the European Court of Human Rights also demonstrates the legal right to self-determination, as well as a positive right to respect for privacy at all stages of a trans person's journey, and has discussed limits to the freedom of expression on gender identity issues.[7]

4. Specific Comments on aspects of the draft Policy

Section 1: Commitment to Trans Equality

We welcome that the Commission is committed to "supporting transgender employees through any transitioning process." We also recognise that a transgender employee may need support prior to or after they undergo a transitioning process. We, therefore, highlight the need for trans people to be supported throughout their career in the Commission, which will be crucial in ensuring equality of opportunity for trans people is upheld within the workplace.

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[1] ILO press release 17 May 2015 'LGBT workers entitled to equal rights and benefits at the workplace: Statement by ILO Director-General Guy Ryder on the occasion of the International Day against Homophobia and Transphobia'
[2] ILO (May 2022) Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work: A learning guide
[3] United Nations Special Rapporteur in the Field of Cultural Rights and the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity (October 2023) Cultural life and SOGI: Policy position
[4] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). The UK signed the Convention in 1981 and ratified in 1986.
[5] CEDAW Committee (March 2022) Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 134/2018*,**
[6] Council of Europe (2016) Protecting Human Rights of Transgender Persons
[7] European Court of Human Rights (updated August 2022) Guide on the case-law of the European Convention on Human Rights: Rights of LGBTI persons

We also welcome that the Commission will "seek to demonstrate its commitment to trans equality in related policies, processes and activities." The Commission should therefore play an active role in updating and consulting on policies, processes and activities and this should involve consultation with trans people themselves.

Commitment to trans equality must also include clear communications of these policies to all staff members and service users. Taking a stance on this issue, particularly with regards to issues that have been weaponised and framed as controversial in public conversation, is important and sends a message to all staff about what is acceptable within the workplace, and to the public about the commitment of local government to serve all members of the community.

Section 2: Definitions

The definitions proposed in this document are largely in line with those used within the LGBTQIA+ sector. The terms 'transsexual' and 'crossdresser' are slightly outdated, however, some trans people may choose to identify with these terms so their inclusion in the list is suitable in this context. It is important that terms used to describe trans employees are based on self-identification and trans employees should be consulted on what terms are acceptable to use when referring to their gender identity. There should also be an acknowledgement that a person's preferred terms of description and pronouns may change over time.

Section 3: Employees Who are Transitioning at Work

We acknowledge that conversations around employees who are transitioning at work are sensitive and would advise that managers undergo specialist training from the LGBTQIA+ sector on best practice in the workplace for responding to these issues.

[3.1] During these conversations between manager and the employee the welfare of the employee must be prioritised. This section should, therefore, include safeguarding measures that should be taken to ensure the safety of everyone involved. We agree that the employer must always have the consent of the trans person to disclose their gender identity to other relevant people involved. Those relevant contacts should also be notified not to spread any further information without the trans person's consent. Robust disciplinary processes must also be put into place to ensure that this is adhered to, and this should be laid out clearly in internal Council staff policies.

[3.3] This section would benefit from a commitment from the Commission to provide gender-neutral bathrooms where appropriate, within the limitations of the building.

[3.5] We recognise that an employee in a customer facing role who is transitioning may wish to redeployed, whether on a temporary or permanent basis. This should

always be at the request of the trans person themselves, not the manager, and should be facilitated if at all possible.

[3.6] This policy should reinforce that transition-related medical appointments may be physically or mentally related to transition. This would allow absence for rest periods after surgery, for example, or if the employee is suffering badly with gender dysphoria.

[3.7] It could be helpful to make clear whether or not the following suggestion is optional or compulsory:

> *...Put in place a support plan or agree a checklist to clarify the actions that will be taken over the course of the employee's transition, dates by which these will be done, and the person who will take responsibility.*

It is important that such a checklist or support plan does not put unnecessary pressure on the employee to complete certain tasks by certain dates as timelines for transitioning are not always predictable or linear. This will ensure that the support plan is supportive as intended and not a source of additional pressure.

Section 4: Discrimination and Abuse

We support the Commission's proposal to monitor all incidents of alleged discrimination, harassment and bullying. We also welcome that the Commission have committed to taking "a zero tolerance approach towards discrimination and harassment based on gender identity, gender expression or gender history." The inclusion of these three strands is excellent.

[4.1] It is suitable that the effectiveness of this policy is reviewed every three years. However, we would encourage that the Commission take a pro-active approach to monitoring and reviewing the policy in line with changes in current issues and legislation and that the policies are cross-referenced with other policies, for example a social media policy, a sickness/absence policy, or others, to ensure that there are no contradictions. Staff should be updated on any changes that are made, leaving space for consultation with trans employees.

Section 5: Legal Protection for Trans People

The WPG would welcome a revised Gender Recognition Act that would allow people to obtain a Gender Recognition Certificate (GRC) through self-identification, as is the case in many states and indeed in the Republic of Ireland, with no adverse impacts on anyone, providing an accessible route for trans people to obtain a GRC should they want one. We recognise that this is not the case in law at the moment, however, and the protections described are an accurate summary of the legal protections at present. Section 75 of the Northern Ireland Act also provides protections from

discrimination against individuals on the basis of their gender, which incorporates transgender people and their acquired gender and applies only in Northern Ireland.

Section 6: Recruitment

We agree that "recruiting managers who become aware that an applicant is trans will maintain full confidentiality," and would add "unless disclosure to relevant contacts is agreed in writing by the trans employee."

Section 7: Roles and Responsibilities

[7.2] Ensure that it is only 'relevant' colleagues that are informed about the employees transition, in a manner that is agreed with the trans employee beforehand. The policy could potentially benefit from changing the wording of this section from 'in a manner that is agreed with and best suits the employee' to 'agreed with the employee' so that it clearly states the necessary requirement of the employee's explicit consent, which could prevent others making decisions on behalf of the employee without their input.

If the employee chooses to tell another colleague about their transition, this information should not be shared without the consent of the employee and the Commission should be proactive in preventing the spread of 'gossip' about the employee's transition, which could result in other colleagues accidentally or intentionally 'outing' someone.

[7.3] We welcome the inclusion of trans and non-binary training and would recommend that the Commission stay informed about topical issues faced by the LGBTQIA+ community, such as incidents of death or hate crime in the community, to further support their colleagues' health and wellbeing if any such incidents do arise. For example, the death of Brianna Ghey in February 2023 had a significant impact on trans people and the wider LGBTQIA+ sector across the United Kingdom. However, workplaces should foster a culture of inclusivity, more generally, not only when there is a high-profile news case.

The introduction of specialised training should be done in a way that is sensitive to the risk that it could draw attention to the trans identity of any employees who are 'out.' One way to do this is to ensure that training on these issues is mandatory and included as part of a suite of trainings, regardless of whether or not there is a trans employee in the workplace. This would help to foster a general workplace culture of inclusivity.

Section 8: Support for Employees with a Family Member who is Transitioning

This section is supportive to those undergoing transitioning in its recognition of the mental impact of transition on a person's family. We agree that the family member may need to be supported through the process and the employee may need time off

work to support them. We view this as an incredibly progressive step in recognising all aspects of a person's transition including those outside of the workplace and fully support its inclusion as part of the equality policy. We applaud the LGSC for considering the impact of transitioning on their employees' lives as a whole and not just their work life.

Section 9: Glossary of Terms

This glossary of terms is a comprehensive list that encapsulates the majority of the terms the LGBTQIA+ sector would use. However, it would be helpful to include definitions of all key terms mentioned in Section 2 (Definitions) in the Glossary, as some of these terms are lesser used and employees may not be familiar with them. Therefore, the Glossary could benefit from including the following:

- Intersex: a person is assigned intersex, often at birth, when their sex characteristics don't align with medical definitions of male or female. The external and internal body as well as chromosomes and hormones can all be factors when assigning someone as intersex.

- Agender: Agender people see themselves as neither a man nor a woman, or both. They are gender-neutral and often are described as genderfree or genderless.

- Gender Reassignment - A process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process.

- 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.

Other terms mentioned in section 2 of this draft policy:

- Transsexual,
- Gender-queer (GQ),
- Gender-fluid,
- Non-binary,
- Gender-variant,
- Crossdresser,

- Genderless,
- Non-gender,
- Third gender,
- Bi-gender,
- Trans masculine,
- Trans feminine
- Neutrois.

It should be noted under the definition of 'gender reassignment' that it is not always the case that a person may undergo a 'medical supervision' to reassign their gender. A person may also wish to undergo a social transition to reassign their gender where medical support is not available or too costly, or they find themselves on a long waiting list. Social transition may include changing their name, their pronouns, their appearance. For some trans people, they will undergo a social transition and a medical transition at two different stages of their life. An employee should be supported regardless of whether their gender reassignment is medical or social or both, simultaneously or at different times.

It should be noted under the definition of gender recognition certificate that the certificate does not currently include non-binary people. Managers should be committed to supporting members requiring a GRC, which may include writing a letter of support to the GRC panel.

Section 10: Action Plan and Checklist

Instead of disposing of the action plan at the end of the medical or social transition we would suggest that the action plan is in place until the employee informs the manager that it is no longer needed. This supports the view that transitions often do not have a beginning and end period, but they are evolving continually.

5. Additional Comments

To conclude, the Women's Policy Group supports the introduction of a LGSC Trans Equality Policy which aims to support trans people in the workforce and those with trans family members. We believe that this policy has the potential to bring considerable benefits to employees of LGSC and transgender people in Northern Ireland, more generally, and will be strengthened if the comments outlined above are considered by LGSC in the finalisation of this policy.

For any questions or queries relating to this submission, please contact Elaine Crory, Women's Sector Lobbyist at WRDA: elaine.crory@wrda.net.