

CIPD

Guide
September 2023

Transgender and non-binary inclusion at work

The CIPD has been championing better work and working lives for over 100 years. It helps organisations thrive by focusing on their people, supporting our economies and societies. It's the professional body for HR, L&D, OD and all people professionals – experts in people, work and change. With almost 160,000 members globally – and a growing community using its research, insights and learning – it gives trusted advice and offers independent thought leadership. It's a leading voice in the call for good work that creates value for everyone.

How we created this guidance

This evidence-based guidance is based on several stages of research and has included the views and input from a broad range of stakeholders, including those with transgender and non-binary lived experience in the workplace. This includes:

- a rapid evidence assessment of 59 evidence-based academic publications from the business and social science disciplines
- a scoping review of 69 non-academic research reports and guidance documents from established, reputable bodies and organisations
- a review of 11 recent, relevant employment tribunal (and appeal) decisions. See: Appendix A: List of employment tribunal and employment appeal tribunal cases
- interviews/focus groups with 27 representatives from equalities and LGBT+ advocacy organisations, LGBT+ inclusion training organisations, consultants, academics, legal experts, and policy experts
- applied practice scenarios/discussions with four organisations who have experience of designing and implementing transgender and non-binary inclusive policies and practices
- a pre-publication testing phase where four people management/trade union professionals reviewed drafts.

Some key terminology

- **Cisgender** refers to a person whose gender identity aligns with their birth sex. Often used by cisgender allies who by using this term recognise that transgender and non-binary people exist and matter.
- **Deadnaming:** Calling someone by their birth name after they have changed their name, often associated with transgender and non-binary people who have changed their name.
- **Gender:** Although some individuals may have a different belief, there was a broad consensus within the literature reviewed as part of this guidance that gender is a person's sense of self as a man, woman, non-binary person or other sense of gender (including no gender). A person's gender may match the sex they were assigned at birth, or it may be different.
- **Gender critical:** The philosophical belief or opinion that biological sex is "real, important and immutable" and should not be conflated with gender identity, even in cases in which a transgender person has legally changed their sex for all purposes (see 'Gender Recognition Certificate' for more information). This belief is capable of protection under the UK Equality Act (2010) on the grounds of the protected characteristic of 'Religion or Belief', even if such a belief or opinion may be considered profoundly offensive and even distressing. According to the 2021 EAT judgment of *Forstater vs CGD Europe* this does not allow "those with gender critical beliefs [to] misgender trans persons with impunity"; rather, they will "continue to be subject to the prohibitions on discrimination and harassment under the Equality Act".
- **Gender fluid** is a person whose gender identity is not fixed and they remain flexible about their gender(s).
- **Gender reassignment:** The definition is broad, so is likely to cover a wide range of transgender and non-binary people, but in the UK it is a protected characteristic under the Equality Act (2010). A person is protected from the point at which they propose to undergo "a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex". In England, Scotland and Wales, this does not have to involve any surgical or medical procedures. So, someone would almost certainly be protected if they were simply changing their name, hairstyle, voice and/or presentation.
- **Gender Recognition Certificate (GRC):** A document that allows someone to change their legal sex, applicable in England and Wales, which means they can get legal documents such as birth, marriage and civil partnership certificates in their new legal sex.

- **Intersex:** A naturally occurring variation of human development where someone's sex may not be explicitly male or female depending on various factors. Almost all intersex people are assigned a binary sex at birth. Although some intersex people may identify as transgender, many identify strongly as male or female. Being intersex is a physical attribute, not a gender identity, and so intersex experiences should not be combined with those of transgender and non-binary people.
- **LGBT+ or LGBTQIA+:** Two examples of acronyms that are used to refer to the wider community of minority genders and sexualities, including lesbian, gay, bisexual, transgender, queer, intersex and asexual. The + sign aims to represent people within the community who do not identify with one of the letters in the acronym.
- **Misgendering:** Referring to someone using a word, especially a pronoun or a form of address, which does not correctly reflect the gender with which they identify. People who experience being misgendered are commonly those from the transgender, non-binary and gender-fluid communities.
- **Non-binary:** Someone whose gender identity does not fit within a male/female binary. People may personally choose to use other terms to describe their lived experience, such as genderfluid, genderqueer, bigender or agender.
- **Pronouns:** Pronouns are words which stand in for a name, such as he/him, she/her or they/them. Some non-binary people may not want to use the terms he/him or she/her because it does not reflect their experiences or feels too gendered.
- **Sex:** A biological or legal category where people are assigned either male or female, typically based on biological or physiological attributes.
- **Trans:** An overarching umbrella term to refer to people whose gender is not the same as, or does not sit comfortably with, the sex they were assigned at birth. Although some definitions of trans include cross-dressing, some may find this inappropriate because it refers to gender expression, not gender identity.
- **Transgender:** Someone whose gender is not the same as the sex they were assigned at birth. This is our preferred term throughout this guide.

For further guidance about inclusive language, [see Appendix B: Inclusive language](#).

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Guide

Transgender and non-binary inclusion at work

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1 Foreword from the CIPD

Increasingly, organisations are recognising the value and importance of equality, diversity and inclusion (EDI). This includes business benefits such as increased creativity, better decision making, greater levels of motivation and improved performance, ultimately leading to better customer care and bottom line. However, this also includes ethical and legal reasons, that discrimination and prejudice is simply wrong, immoral and unlawful. The UK Equality Act 2010 requires employers not to discriminate against anyone at work and to create a safe working environment where all staff can feel safe and achieve their full potential. However, we know that discrimination, such as racism, sexism and transphobia, persists in society and, in turn, organisations. Sometimes the different types of discrimination intersect and create multiple forms of disadvantage and barriers for an individual or group and needs to be addressed through an intersectional approach to EDI.

Understanding how to support and manage transgender and non-binary inclusion and rights at work is becoming increasingly important to employers, particularly people professionals and line managers. This is due to several factors including the growing visibility and awareness of transgender and non-binary people in the workplace and society; the need for clear guidance for employers on transgender and non-binary inclusion and rights; and in response to recent case law, for example workplace conflict on the issue of gender critical beliefs.

These developments, alongside demand from some CIPD members for support on how to manage and support transgender and non-binary people and their rights in the workplace, provides the context for this guidance, which joins our suite of guidance for people professionals on how to manage a range of emerging or sometimes complex workplace issues such as neurodiversity, mental health, bereavement, race, sexual harassment, the menopause, fertility support and pregnancy loss.

Peter Cheese
Chief Executive
CIPD

2 Introduction

The purpose of this guide is to provide advice to help people professionals, employers and managers improve their understanding of issues and support them in delivering transgender and non-binary equality, diversity, and inclusion (EDI) in the workplace.

Many organisations are likely to have staff or customers who are transgender and/or non-binary who experience harassment and discrimination. This guide will help address and enable transgender and non-binary people to

be respected, feel included and empowered to be their best. CIPD research has shown that LGBT+ employees are more likely to experience workplace conflict and harassment than their heterosexual, cisgender counterparts. Forty percent of LGB+ workers and 55% of transgender workers have experienced such conflict, compared with 29% of heterosexual, cisgender employees. In addition, a higher proportion of LGB+ workers (16%) feel psychologically unsafe in the workplace compared with heterosexual workers (10%), while for transgender workers, this figure is even higher at 18%. Research has also shown that actions taken to achieve EDI for one protected characteristic group, as part of a wider EDI strategy, is beneficial for all staff.

However, like other areas of EDI, transgender and non-binary equality issues can be complex and sometimes lead to polarising views across a spectrum of beliefs which need to be balanced and managed. This includes gender critical beliefs (see "Some key terminology").

This guide will help raise greater awareness and understanding of transgender and non-binary people's experiences in the workplace. Some of the highlights of a successful approach to transgender and non-binary inclusion at work involves:

- ensuring this work is part of broader EDI efforts which in turn needs to be integral to the wider organisational business plan
- taking the time to reflect, consult and discuss within and beyond your organisation
- focussing on the possible solutions and benefits, rather than focussing on problems around transgender and non-binary EDI, and preferably before problems arise. Take a flexible and open-minded approach appropriate for your organisation
- enabling everyone from senior leaders to frontline staff and third parties to actively participate in EDI work
- thinking carefully through the whole employee lifecycle, from recruitment through to progression, to exit (why a person is leaving)
- developing a clear set of organisational values, training approaches, and policies
- keeping all this alive in daily workplace practice.

There are different ways to interact with this guidance. You can read the whole text or skip to chapters that are relevant for your job role or responsibilities. At the end of most sections there is an example of best practice or experience of recommended actions.

The guidance will take you through foundational principles and focus on key workplace policy areas, and you can find further useful information on creating a transitioning at work action plan, workplace conflict, and data management. This guidance is part of CIPD's ongoing work to support employers to deliver EDI in their organisations.

3 Setting the right foundations for EDI in the workplace

In addition to employers' legal responsibilities to create a safe and equal working environment, it is vital that all employees, including transgender and non-binary people, are enabled and empowered to feel that they can trust you as a colleague, manager, people professional or employer. There are three core guiding principles that can help you build the trust and confidence needed to embed EDI fully across your organisation:

- **Dignity and respect**

This means honouring and caring about transgender and non-binary people's sense of self, their identity and their wellbeing. It is also about interacting with transgender and non-binary people in a respectful and inclusive manner.

- **Humanising and empowering**

This is about placing individuals at the heart of decision-making on their personal journey at work, enabling them to feel empowered by policies and practices, and adapting processes to best address their specific needs.

- **Proactive and dynamic**

This means learning, adapting, and being solutions-focussed in your approach to inclusion. Engaging with transgender and non-binary inclusion at work is another opportunity to continually learn and grow as a responsible employer.

These general principles could be used across the development of culture and values around EDI as a whole, as well as specifically for transgender and non-binary people.

"It's about inclusion being part of the DNA of the organisation. It's about your values, and what you stand for as an organisation ... This is about looking holistically at the organisation."

Transgender and non-binary inclusion training consultant

In terms of providing day-to-day support, you could focus on:

- psychological safety – encouraging transgender and non-binary workers to voice their opinions and suggestions to improve the work environment, and ensuring a safe and secure climate where people feel able to talk openly and learn from each other.
- allyship – actively standing up for and advocating the rights, inclusion and progression of transgender and non-binary people in the workplace.
- authenticity – empowering transgender and non-binary workers to express their authentic self in the workplace, and showing outward acceptance when they do.

For one private retail sector employer, a few aspects were key to creating a supportive organisational climate:

- **Ensure the whole leadership team is involved** in transgender inclusion, rather than parking responsibility with HR teams.
- **Set expectations for leaders** to actively challenge overtly and covertly aggressive behaviour.
- **Be bold and brave in messages of support** for transgender and non-binary colleagues and customers.

“The work we’re doing around transgender inclusion all starts from wanting to be a modern business that’s relevant in the future to our colleagues and our customers ... where everybody can be their authentic self and feel at home ... It’s just the right thing to do.”

Senior leader – private retail sector employer

What are my legal responsibilities as an employer in the UK?

As an employer, you have a responsibility to ensure that the working environment you create is safe for all employees. Under the UK Equality Act (2010), employees in England, Scotland and Wales who have a protected characteristic have the right to be protected from discrimination, harassment and victimisation at work. This applies equally to all nine protected characteristics (age, disability, being married or in a civil partnership, being pregnant or on maternity leave, gender reassignment, race, religion or belief, sex and sexual orientation). See Appendix C: What is bullying, harassment, discrimination and victimisation?

The legal landscape is different in Northern Ireland, where equal opportunities and discrimination are ‘devolved matters’ and other legislation applies. However, people with the protected characteristic of ‘gender reassignment’ are still protected from discrimination under the Sex Discrimination (Northern Ireland) Order 1976. The 1976 Order sets out the definition of gender reassignment and, therefore, who is protected.

You should not tolerate any unwanted behaviours that lead colleagues to feel unsafe at work, which can often be caused when people have a protected characteristic. Therefore, you need to tackle both unacceptable and problematic behaviour in the workplace.

Public authorities in England, Scotland and Wales must also consciously or proactively consider how to eliminate unlawful discrimination, advance equality of opportunity and foster good relationships between those who have and do not have a protected characteristic according to the Public Sector

Equality Duty. In Scotland, the Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012 also apply, involving equality impact assessments, workforce equality monitoring and developing equality outcome measures. Similar obligations are also in place in Wales.

The Equality Act (2010) may also protect gender-critical views, as holding these views is not in itself unlawful discrimination. A number of recent cases (See [Appendix A: List of employment tribunal and employment appeal tribunal cases](#)) have collectively reasoned that gender-critical beliefs can meet the criteria to be a protected belief. For example, in *Forstater v CDG Europe*, Forstater's belief was that sex correlates to reproductive biology and that it is impossible to change sex. A person cannot be treated less favourably at work due to holding these views, and holding these views does not amount to unacceptable behaviour. However, this does not give anyone the right to manifest any beliefs in a discriminatory way at work, and the manner of expression of these beliefs could amount to unlawful discrimination depending on the circumstances.

You may need to be very clear on how you and the organisation draw the boundaries between acceptable differences of beliefs and unacceptable manifestations of behaviour in the workplace.

EDI policy design

Before we focus on specific policy areas, here are some general pointers around designing workplace EDI policies. Depending on your organisation size, resources, and so on, you could apply these to a specific transgender and non-binary inclusion policy or apply the principles to your overarching EDI or broader people management policy and then consider how they could be applied to issues specific to transgender and non-binary people.

- **Consult experts and include people with lived experience where possible**

Develop relationships with internal and external stakeholders, such as advocacy/training organisations, trade unions and staff networks, who can become critical friends and advisers. You may also want to reach out to specific customers, clients or service users to ask if they would be willing to share their thoughts.

Be engaged and active in the process; for example, discuss which recommendations may need to be adapted to better fit your organisation's culture or business needs.

As for any marginalised group, understanding their lived experience is important, and you should consult a wide range of people, including those who represent other minority groups and protected characteristics, to help:

- develop an intersectional perspective; for example, understanding the specific experiences and needs of transgender and non-binary people who may also be black and/or disabled
- identify any particular aspects which may not be clearly understood and/or fully accepted by others who hold alternative views
- give you the time to reflect carefully on the most appropriate course of action rather than fall back on imperfect or ad-hoc reactions.

- **Adopt broad definitions with generosity of spirit**

It's important for employers or people professionals to understand and keep up to date with equality law, seeking expert legal advice as necessary.

Specific to transgender and non-binary people, while there are some differences of opinion, there is a broad consensus that the definition of 'gender reassignment' in the Equality Act (2010) is broad and covers a wide range of transgender and non-binary people. So, protecting all transgender, non-binary, genderfluid and intersex people from discrimination, harassment and victimisation is not just good practice, but may also help reduce legal risk.

Although the judgement does not have binding authority, a recent employment tribunal case (Taylor v Jaguar Land Rover Ltd) ruled that non-binary and genderfluid people have the protected characteristic of gender reassignment and so are protected from harassment, discrimination and victimisation.

Non-binary and genderfluid people may also be protected via 'perceptive discrimination' – being perceived to have the protected characteristic of gender reassignment – whether this perception is correct or not.

- **Integrate practical examples to help people understand different scenarios**

To be as practical as they can, policies should:

- include practical examples
- focus on a range of different scenarios
- be easy to update (for example, as terminology or legislation may change)
- be aimed at specific people in the organisation; for example, a guide for line managers managing a transgender or non-binary worker should be different to a general guide written for employees.

Policies should operate as a 'guide on the side' that can help people interpret how they should act depending on the situation they are in – for example, in supporting a transition or in dealing with data management concerns. In more challenging circumstances, people should seek guidance from their HR teams.

- **Audit and adapt all people management policies regularly**

Good practice means reviewing all people management policies through an EDI lens on a regular (such as annual/biannual) basis, such as recruitment and selection, absence management, family/childcare, prescriptive and/or gendered dress codes and flexible working.

You should also check that practice 'on the ground' mirrors what is written in policy; for example, are there examples of transgender or non-binary experiences used as part of wider EDI training?

You may also want to involve internal stakeholders in identifying what may need adapting or updating – for example, holding a listening group with specific staff, such as LGBT+ network representatives, EDI champions and trade union representatives, to discuss policies. Make sure that employees can access a feedback loop where any concerns/opportunities on people policies of any kind can be raised.

4 Embedding policy

When embedding new policies or changes to existing policies, you should consider:

- **Designing and delivering effective training to translate policies into reality**

Training is fundamental to building the awareness and knowledge of managers and co-workers so they can better implement policies. It needs to include real-world examples and be reinforced by the actions of leaders.

Transgender and non-binary inclusion training is most effective when it is part of wider EDI training and when transgender and non-binary people themselves are involved in its design and delivery, ensuring they are appropriately recognised, in line with your policy on working outside of normal job roles, for their time and expertise. Where necessary, you could also use specialist EDI training organisations/consultants to do this for you.

- **Engaging line managers to support transgender and non-binary inclusion**

All managers need to take responsibility for EDI in the workplace if it is to be successful. One way to encourage engagement for transgender and non-binary EDI is to clearly articulate that it is an essential part of broader EDI and line management responsibilities, and should be embedded in their daily practice of being a supportive manager. There is also a need to build managers' awareness of the wider discriminatory and prejudicial landscape that transgender and non-binary workers face, and how they may not always know if they have a transgender or non-binary member of staff, supplier, customer or client.

- **Educating the workforce to tackle prejudice that can impact performance and wellbeing**

Managers should think about how best to manage performance in an inclusive and developmental way, such as breaking down tasks and goals, conducting regular informal reviews on progress, and taking action to address wider issues around inequality and unfairness. Usual policies around wellbeing, performance and support should be applied, with a particular focus on the needs of that individual.

- **Create a safe space for one-to-one conversations across your organisation**

People can learn from each other's experiences and ask questions that they may have been scared to ask out of fear of offending or appearing ignorant.

- **Equip line managers to effectively deal with conflict within their teams**

Particularly if trying to resolve disputes informally as a first port of call. You may want to provide training and reflective/ongoing learning to managers on having difficult conversations and resolving conflict – this is likely to require regular activities over time rather than a one-off event.

5 Considerations for transgender and non-binary EDI in the workplace

The next three sections will look at specific challenges to consider as part of your EDI policy within the transgender and non-binary EDI workplace space:

A. Entry into the organisation – focusing on attraction, recruitment, and onboarding.

B. General working life – focusing on supporting a transition, preventing harm and protecting wellbeing, and using facilities.

C. Transgender and non-binary data management

Our aim is to help you navigate through the broad landscape of transgender and non-binary workplace EDI and to think about key considerations you may want to reflect on, and actions you might take.

A. Entry into the organisation

This 'entry into the organisation' section focusses on:

Attraction: how you and your organisation can enhance inclusivity by attracting candidates who are transgender or non-binary.

Recruitment: how you and your organisation can build on your existing recruitment and selection processes to be more inclusive of transgender and non-binary candidates, so they feel confident and are less likely to drop out or not take up the position if offered it.

Onboarding: how you and your organisation can make the induction process more welcoming to new starters who are transgender or non-binary, and to clarify expectations around EDI for everyone new to the organisation, so they can also help you to maintain an inclusive working atmosphere.

There are a number of practices you could consider in relation to inclusive recruitment and you can find information to support you in the [CIPD's inclusive recruitment guide](#).

Attraction

A first point of call is to explore the signals you and your organisation communicate to potential candidates via images, statements and career information that prospective candidates can access.

Images, statements and careers information convey particular meanings. For example, you may make a specific statement in a job advert that your organisation welcomes applications from those who are from under-represented or marginalised groups. These are typically known as equal opportunities statements and are a good step in the right direction; however, taking steps to go beyond this is important to further EDI for all.

You can pro-actively convey that you are a transgender and non-binary inclusive EDI employer via career information webpages or prospective applicant packs/information documents by:

- promoting LGBT+ staff networks and their activities
- showcasing transgender and non-binary employees' stories, where permission is sought and it is part of a wider collection of positive employee stories and experiences (however, do be mindful of the potential impact of making a colleague visible in a public domain)
- publicising community engagement with LGBT+ groups; for example, fundraising, charity partnerships and participating in Pride events
- making EDI policies public where appropriate. If there are reasons for not making internal HR policies public, think of ways you can articulate key aspects of them, and make it clear that prospective candidates can request more information if they wish.

"We had [a prospective transgender candidate] ask if they could speak to anyone within the firm, within the LGBT+ network ... to find out more about the experience of a trans person in the organisation ... They were interested in seeing what policies we have in place and the structure, and whether we were prepared to facilitate a trans person within the organisation. [That conversation] reassured them and made them feel comfortable that this is something we've thought about. We're not just going to be winging it."

Senior manager – professional services employer

Occupational requirement when recruiting

In a very narrow set of circumstances, employers might want to specify that a candidate must have (or not have) a particular protected characteristic. This is known as a genuine occupational requirement. According to the UK Equality Act (2010), it may, among other things, take the form of "a requirement not to be a transsexual person" (Schedule 9 1 3(a)). If you think you want to apply a genuine occupational requirement, you must establish that it is essential for the role and that it is a proportionate means of achieving a legitimate aim. Each case is very fact-specific, so it is unlikely there are roles or sectors where an occupational requirement would always be appropriate. You must

consider all possible less discriminatory options first, such as if discrete tasks could be carried out by someone else. If you wrongly apply an occupational requirement, this can be unlawful. If you do decide to specify an occupational requirement, you should explicitly state the requirement in any vacancies. The occupational requirement should be reviewed each time the post is re-advertised. As this will only arise in very specific situations and the law is fact-specific and complex, you should always seek independent legal advice.

Recruitment

There are three main areas to focus on within recruitment:

1 Provide high-quality training to hiring managers.

Training shouldn't just focus on unconscious bias elements. It should help anyone making selection decisions to improve their awareness of marginalised groups, including specific issues related to transgender and non-binary people's experiences and identities. For example, understanding some key terms and concepts, understanding the issues around transgender and non-binary-specific discrimination and prejudicial attitudes, understanding anxieties that transgender and non-binary people may have around gender presentation during an interview, and so on.

As part of inclusive recruitment training, you should build additional knowledge around what is appropriate versus inappropriate (ie invasive) to ask a transgender or non-binary candidate during an interview. Training should also be given to ensure that if the gender history of the candidate is not explicitly known to the interview/selection panel or hiring manager that they do not make assumptions or 'out' someone based on how they physically appear at interview/during the selection process. You may need to provide additional advice on how to supportively respond if a transgender or non-binary candidate chooses to share their gender history before or during a selection process. Lastly, training should also highlight the opportunities that transgender and non-binary candidates can offer to prospective managers. They often will have developed skills and talents from the process of living in their affirmed gender – for example, competencies related to change management and navigating difficult conversations.

2 Have a key point of contact for applicants from disadvantaged backgrounds to help them navigate the process.

Many transgender and non-binary people experience discrimination and will potentially have had poor previous recruitment experiences. Some will not choose to share their transgender or non-binary identity during selection, while others will be more open. Therefore, different approaches may be adapted depending on the extent to which someone has shared information before or during an interview.

Good practice would be to have a key point of contact to deal with the important administrative elements, especially misaligned information that

may 'out' someone, such as incorrect pronouns or deadnames connected to their qualifications, references or any necessary Disclosure and Barring Service (DBS) checks. This point of contact can also signpost applicants to the confidential DBS checking service where necessary for the role. This 'sensitive applications' route gives transgender and non-binary applicants the choice to not include information on their DBS certificate that could reveal a previous gender identity. As you may never know if an applicant is transgender, non-binary or not, all people applying for DBS-checked posts should be made aware of this option.

It's important this point of contact is trained appropriately, is highly knowledgeable about data management and understands the specific issues related to gender identity, and is personable and friendly. This point of contact could be someone in HR or in the recruitment/talent acquisition team, or in smaller organisations this could be a director or manager who has some relevant experience or knowledge of recruitment, data management and employment processes.

3 Adapt application processes where necessary to ensure gender-sensitive EDI.

This may include considering whether binary male/female gender or sex-related questions, pronouns or titles are necessary or appropriate in job application forms. For example, you may wish to remove the need to specify a title on certain forms, or ensure that an option for no title and/or other title is always available.

You may have reporting or data monitoring requirements in relation to sex and/or gender of both applicants and successful candidates. If so, ensure a range of options, including 'prefer not to say', 'non-binary' and self-described options, are always available. Issues can also arise when uploaded/submitted documents do not reflect the affirmed name or gender of an applicant when completing a job application form. This might include ID, qualifications, CVs and references. Organisations should be understanding about differing information and reassure people they will be known by the name and pronouns of their choice and that personal information will not be shared without explicit consent.

It is also worth considering whether any significant changes to your recruitment and selection practices may impact on EDI, including transgender and non-binary EDI. For example, many organisations are now moving towards a more technologically assisted or virtual process of recruitment and selection. This may include the use of more sophisticated psychometric tools, AI-driven CV sifting and shortlisting programs, or virtual interviewing and assessment tasks. It is important you understand what potential biases may be inadvertently built into these technologies. Other issues include accessibility and usability of the technologies for different types of candidate, as well as whether it may inadvertently misgender or misrepresent a transgender or non-binary person; for example, if it uses data such as voice tone or facial expression in the way it makes assessments.

“Don’t make assumptions on appearance, or voice, or dress ... You shouldn’t be asking, I think you’re the trans applicant, tell us about that ... But if somebody comes out as trans or non-binary in interviews, be ready with a really good answer. For example, they may ask ‘I’m a trans person, what’s it like working in this organisation?’... Don’t look at the ceiling or the floor, and stammer, and go, I don’t really know. Because this is about you being tested by the applicant, because they want to work in a safe space.”

Transgender and non-binary inclusion training consultant

Onboarding

A helpful starting point is to extend the role of the key point of contact mentioned in the previous section. They will have got to know the person and any particular concerns or issues that need to be addressed. Importantly they will be able to:

- **liaise with appropriate data management and systems teams** to determine and address any new data needs/issues
- **ensure no information is passed on** without explicit consent and only on a need-to-know basis
- **help demystify information systems** within your organisation for the new employee so they can make informed decisions about what they choose to share and how it is shared.

Remember that first impressions last and employee experience is not the job of a single person – everyone who meets or works with a new starter during their first few weeks will give them signals about whether they ‘fit in’ or not. Think about what signals new starters may pick up on in their first few weeks:

- **Take a physical walk through the life of a new starter** and note down what a transgender or non-binary person might pick up on, such as what physical dress norms are prevalent. In a remote setting, this may be focussed on how people interact via emails, online meetings and company social media/instant messaging.
- **Be your own critical friend** – try to pinpoint anything related to your culture and processes that could jar or prove problematic, not just for transgender and non-binary people but for other marginalised groups too.

- **Talk things through with colleagues and/or with inclusion experts** to understand how you could optimise the inclusiveness of those signs and signals for everyone. For example, referring to groups of people as ‘guys’ may exclude/jar with some colleagues.

Other relevant activities to think about during every induction include:

- **carrying out early training to show your commitment to EDI**, which should include introducing inclusive language – it doesn’t have to be onerous; for example, it could just include a 10-minute session to introduce expectations
- **clarity of requirements for on-the-job training activities** – you may need to notify certain expectations in advance, such as clothing required for physical activities
- **introducing key HR contacts, EDI or wellbeing leads, trade union representatives or LGBT+/allyship networks** – this can help new starters feel welcome and know where they can go for support or resources.

After onboarding, when you start to look at longer-term advancement and development for all staff, consider how to create opportunities within leadership programmes for transgender and non-binary employees, reflecting wider diversity and inclusion efforts.

“[Our leadership programme] is about identifying LGBTQ+ people within our business that want a step on in their career ... It’s about giving them some practical guidance and advice in that space whilst also how to live and be your true, authentic self and how that can actually help you in your journey and in your career.”

Senior manager – private retail sector employee

B. General working life

This section on general working life includes:

Supporting a transition at work: how you and your organisation could support a transgender or non-binary person along their transitioning journey, so they can be their authentic selves at work.

Using facilities: how you and your organisation can be inclusive in the way you provide access to workplace toilets, shower and changing facilities, so everyone can use facilities they feel comfortable with.

Preventing harm and protecting wellbeing: how you and your organisation can put in place measures to help prevent harm to a transgender or non-binary person in the workplace, as well as to protect their general wellbeing, so they can feel safe, valued and perform their job to the best of their ability.

Supporting a transition at work

Transition is a journey from an assigned sex to a gender that a person feels more comfortable with. This may involve medical or surgical procedures, but it does not have to. Some people may 'socially transition', which may include steps like changing their name, pronouns, clothes, haircut or other aspects of appearance.

There is no single 'roadmap' for a transition. Not every transition involves medical procedures. It may be a life-saving decision and improve happiness and mental health, so should be supported by employers. Transitioning employees must always be at the centre of decision-making around their personal journey within your organisation, such as absence or communicating the change with colleagues, so the journey is right for them.

Your transitioning employee may choose to have initial communication or a conversation with a colleague, line manager or another trusted person, such as a union representative or member of the HR team. This contact should be supportive, remain confidential and establish a trusting and open relationship. Managers should remain discrete and adhere to the wishes of the individual regarding how and when they would like any communication with colleagues to occur.

To support managers and colleagues, organisations should proactively introduce a policy for transitioning at work. Don't wait for the situation to arise, plan ahead to ensure that your people team, managers and staff know what to expect and can deal with it carefully and compassionately. The policy should go beyond possible medical elements and cover aspects including (but not limited to) lived experiences, definitions, best practice for support, how to maintain privacy and data protection, communication and signposting to training for line managers. It can also be useful to offer a checklist that can be used to create an action plan for supporting transitioning employees (see [Appendix D: Transitioning at work action plan](#) for a list of prompts that may be useful).

"I started line managing someone who started a transitionary journey ... She felt secure in her job yet felt uncomfortable in presenting as her affirmed gender in a public-facing environment. So, we agreed that she would present as her affirmed [female] gender in the office but present as male in the public facing environment. We also agreed she would have two different email addresses ... and certain people [with her agreement] were told about certain signals that would help them navigate

which presentation she would use in different contexts. There is a need to tailor the approach to each individual and also understand that some people don't want to undergo a 'full' binary transition either at all or in one go."

Academic expert

As an employer, it would be unlawful for you to treat time off for transition less favourably than time off for sickness, injury or absence. Certain appointments are only available in limited areas of the country (requiring lengthy travel) or may need to happen during the working day. A long NHS waiting list can have significant negative effects on those waiting for treatment. Good practice involves treating absences as special leave and in ways that would not negatively impact performance reviews. Compassion about the type of appointment can make a big difference. For example, while hair removal or voice therapy might appear to be 'cosmetic', it can be life-changing for an individual. As an employer, you will need to consider processes for addressing leave and addressing pay for leave. A good approach is to proactively engage with an employee undergoing a transition to find a collaborative and mutually beneficial solution. This might involve a combination of paid leave, annual leave and/or unpaid leave, for example.

You should not remove someone from duties against their wishes while they're transitioning. This includes when tensions arise with service users or colleagues relating to a transition. You are responsible for making spaces safe, rather than moving transitioning staff. However, transitioning employees may request temporary redeployment, flexible working or adjustments to their role – for example, to avoid manual lifting after surgery or when wearing a binder, or working from home/a back office after hair removal. This must be led by the individual's preferences, and you should accommodate requests as far as is possible.

"Our ethos would be we would support them wherever we could with whatever absence that is. Now, that may be that in that agreement it's paid absence. It may be unpaid. It may be a combination. But that's part of the planning process and we'd work with our HR and ER [employee relations] teams to establish what that would look like. It's done on an individual, case-by-case basis."

Senior manager – private retail sector employer

Using facilities

For use of facilities including toilets, washing and changing facilities, there are three guiding principles:

- Always protect people from discrimination.
- Privacy should be at the forefront of decisions.
- Look for solutions that add choices, rather than remove them.

Listening carefully to employees, and then seeking legal advice on these issues, can help navigate any particular complexities.

“The reality is, it’s not that complex. We don’t have massive teams in our business particularly and most of the hypotheticals never come true. I think that’s the first point. Let’s blow away all the mist of, ‘what happens if there’s...?’ You could spend your life in what-happens-ifs on any topic... Get it down to some real practical stuff.”

Senior leader – private retail sector employer

You can help by:

- **Creating an environment where everybody can use facilities they feel comfortable in and best meet their needs, which should include some gender-neutral facilities.** Refusing to allow a transgender or non-binary person to use the facilities they feel most comfortable in may be discrimination. However, you also need to show understanding to those who may be uncomfortable. Approaching any such discussions should be in the spirit of sharing concerns and building greater understanding and respect in the spirit of compassion and empathy. Changes to UK regulations may be brought forward that will mean all new non-domestic public and private buildings will be required to provide separate single-sex toilets for women and men and/or a self-contained, private toilet as a minimum.
- **Prioritising privacy.** Lockable gender-neutral private cubicles which include toilets and handwashing facilities may offer the most privacy, so you should aim to provide at least some toilets of this nature if you can.
- **Making the most of opportunities by designing adaptations that benefit everyone, not just transgender and non-binary people.** Closed cubicles can be better for employees who need privacy for healthcare needs (such as stoma bags, or after a mastectomy), religious reasons or simply preference. Redesigning facilities can also make baby-changing amenities more widely available and provide sanitary bins for those who need them.

- **Collaborating with building managers or owners** in situations when you do not have ultimate control of estates and facilities, such as if you rent them.
- **Exploring alternative options when space or resources are not available for full refits.** Most organisations have some closed-door cubicles that can be repurposed for everyone to use as gender-neutral facilities, alongside additional separate-sex facilities, to offer choice. There are also other possible practical solutions if resources are limited, such as installing curtain rails in communal changing rooms to offer users privacy.
- **Avoiding imperfect short-term fixes that draw attention to transgender and non-binary people** – planning ahead and being proactive about creating inclusive workspaces for any number of reasons will help to avoid this.
- **Protecting disabled people's rights.** Avoid, where possible, repurposing existing accessible facilities. Expecting transgender and non-binary people to use accessible gender-neutral facilities is not inclusive for either disabled or transgender and non-binary colleagues. It may be discriminatory to force a transgender or non-binary colleague to use accessible facilities.
- **Taking a solutions-focussed approach by addressing any tensions through talking and collaboration,** rather than insisting a transgender or non-binary person has to change facilities or ignoring any comments or feelings of staff who may express discomfort. This could, for example, involve finding an alternative solution for any employee who does not wish to share facilities.

Preventing harm and protecting wellbeing

There are specific factors to consider which may negatively impact a transgender or non-binary person's work performance and wellbeing, particularly during a transitioning journey. These include:

- long NHS waiting lists and very geographically limited healthcare provision
- bullying, harassment and hostility, which is most likely to occur at the point of transition but can happen at any time
- bias from colleagues, including underestimation of skills or abilities, and being assigned less legitimate tasks.

Transgender and non-binary people are particularly likely to experience workplace conflict and report that their wellbeing deteriorates because of things that have happened to them at work. Everyone in a workplace is responsible for preventing harm to others, such as discrimination, and protecting the wellbeing of each other. That also means ensuring that transgender and non-binary colleagues are protected against bullying, harassment, victimisation and discrimination from staff and any external people they may interact with, such as suppliers, customers, and so on.

As with any marginalised or more at-risk group, it is important to understand how bullying or harassment may manifest itself in their particular context.

Therefore, it is important to understand what transphobia looks like, but also to understand other aspects of this space such as gender critical views, personally and as an organisation, so you and your colleagues can act to protect anyone from harm.

“Try and build that rapport ... because it is challenging coming out, but if someone is more open with you, even just generally building that rapport over a conversation, asking about their weekend and being open with them, you’re more likely to get someone opening up.”

LGBT network representative – private banking sector employer

What is transphobia?

Being clear on how you and your organisation define transphobia can help clarify standards for professional conduct and behaviour. Conflict is easier to manage when everyone is clear on the standard of behaviour that is deemed acceptable versus unacceptable.

Definitions of transphobia vary in detail and scope, yet the most common elements are:

- expressing emotional disgust/revulsion towards transgender people
- expressing irrational fears about transgender people
- wanting to inflict emotional or physical harm/violence on transgender people.

A few others additionally include the following:

- deliberate behaviour aimed at disrespecting a transgender person’s identity, such as deliberate and persistent misgendering
- denying or restricting a transgender person’s rights, such as the right to have their private life respected.

Transphobia could impact others who express some form of gender non-conformity such as non-binary people, feminine men or masculine women. As such, it can also be targeted towards people who may not identify as transgender but are perceived to be by others.

You should also:

- **Think about how transphobia may manifest according to different people in the workplace, such as by co-workers, managers, customers/clients or suppliers.**

As such, you may need to have different approaches for dealing with transphobia – for example, disciplinary procedures could be used for co-workers, but this wouldn’t work for clients. Think through the scenarios that could be faced by a transgender or non-binary employee

and what action could be taken to protect them, bearing in mind this is also good practice in terms of protecting your whole workforce in challenging situations.

- **Adopt a more informal, educational response instead of focussing on disciplinary procedures for less severe incidents or as a first response.**

This could include discussing the impact of behaviour, such as misgendering, on transgender and non-binary people, and asking them to put themselves in a transgender person's shoes and understand their lived experience, etc.

- **Ensure you know what the reporting structure and process would be if an incident has taken place that could be deemed transphobic.**

For example, how should you report it, who will investigate the report, and what decisions and actions should be made?

- **Make sure actions match words in policies.**

If you state you will undertake a thorough investigation and take disciplinary action when an incident is deemed transphobic, make sure this action is taken. Employees will lose faith otherwise.

"You've got to enable people to ask their genuine questions. Because people do have them. That's how people learn. If you stifle questions, it doesn't help ... we do need to bring [questions] out and actually unpick that because not every question that sounds like it might be coming from a transphobic or trans-exclusionary position actually is ... It can be tricky to handle but, again, it's about opening up the conversation, let's work with people."

Transgender and non-binary inclusion training consultant

Employers should also think carefully about overseas travel, secondments and international assignments to countries where transgender and non-binary people lack legal protections. Not only might this put your employees at risk, but the experience of going (or being requested to do so) may be distressing.

Alongside preventing harm, we should also be looking after each other's wellbeing at work. Wellbeing support is important in working life for many people. However, there may be a need to tailor wellbeing support for the needs of transgender and non-binary people, particularly if they have recently shared their identity for the first time at work, or are undergoing a transitional journey.

If you are in a role where you may have to help a colleague access formal wellbeing support, you should check the following:

- **Does your organisation have an employee assistance programme (EAP)** and if so, are counsellors available to support transgender and non-binary people?
- **Do employees have direct access to an occupational health specialist,** and if so would they have enough resources and knowledge to provide tailored advice around transgender and non-binary health and transitions?
- **Does your organisation provide health-related benefits or medical insurance,** and if so what treatment and support would this cover or allow?

Transgender and non-binary workplace conflict

There are a number of resources you can use and tailor to inform an appropriate strategy for conflict prevention and conflict resolution. For example, you may wish to refer to the CIPD's [managing conflict in the modern workplace](#), CIPD's [line manager guide on dealing with bullying and workplace conflict](#) and a [guide from the CIPD and Acas on mediation](#). In addition, you must ensure that your approach always follows a full and fair procedure in line with the Acas Code of Practice on disciplinary and grievance procedures as this will be taken into account if claims are taken to tribunal. You may also want to reflect on any opportunities to reform grievance policies into fairness at work policies which incorporate standard grievance within a broader approach for dealing with inequalities and unfairness. However, this can require more time and resources, as well as relevant expertise and consultation.

Responding to workplace conflict

There is a legal risk to an employer if no action is taken if an employee displays inappropriate behaviour towards transgender or non-binary people in the workplace. Inappropriate behaviour could constitute unlawful harassment if it violates dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment, regardless of whether this was intentional or not.

It is important to deal with any issue with a proportionate and ideally constructive response – for example, in particular if you consider that the behaviour was unintentional, then conversation, training and raising awareness may be an appropriate initial response before escalating further, for example to disciplinary. If you are unsure about your response, it is best to seek advice from an appropriate person with expertise, such as a legal or employee relations specialist, first.

Should my organisation adopt a zero-tolerance approach to workplace conflict?

Zero tolerance is entirely appropriate in some cases where behaviour is clearly unacceptable or unlawful. However, it should not be used as a catch-all for every single event, as responding to all incidents in a highly punitive manner may be counterproductive. For example, a blanket zero-tolerance approach may create a culture of fear where co-workers do not want to speak to or interact with transgender or non-binary employees in case they say or do

‘the wrong thing’. This can lead to transgender or non-binary employees being isolated and contribute to detrimental wellbeing and engagement at work. Instead, as part of your overall approach, you may want to offer more collaborative or innovative ways of seeking resolution in line with the nature of an incident and wishes of an employee. For example, this could involve having a private conversation about certain behaviours and how they make others feel at work, or offering specific training. It is therefore essential that line managers or people professionals are properly trained and resourced to have challenging conversations at work. This approach can also help reduce any legal risks of disproportionate use of disciplinary sanctions.

What counts as appropriate and inappropriate manifestations of protected beliefs in work?

While employees have the right to hold protected beliefs, this does not give anyone the right to manifest these beliefs in a discriminatory fashion at work. This could apply to a wide range of protected religious and philosophical beliefs. For example, a colleague who holds gender-critical beliefs may have a proportionate and workplace-appropriate conversation with key individuals about the implications of a particular organisational policy. However, it would be unlawful to deliberately misgender someone, refuse to use the correct name/pronouns or reveal personal information, regardless of their beliefs. Similarly, it would be unlawful for other employees to harass, discriminate against or victimise a colleague for their gender-critical beliefs. In such cases, unlawful conduct would be the reason for any action taken against them, rather than the holding of a protected belief. Courts or tribunals are the only bodies which can ultimately decide whether a behaviour(s) or conduct is unlawful, on a case-by-case basis and in contemplation of the full facts. However, in this instance, we have used the term ‘would’ as deliberate actions of this nature are likely to create ‘a hostile, degrading, humiliating or offensive environment’, and permitting these behaviours (or allowing a clear likelihood of them taking place) is likely to put you at risk. You should therefore support employees to understand that everyone has the right to hold protected beliefs and express them within limits, appropriate to the workplace and in ways that do not discriminate or harass colleagues or breach internal policies.

When assessing whether a particular comment or behaviour has gone beyond those limits, a recent employment appeal tribunal judgment (Higgs) set out that employers should bear in mind things like the content, tone, extent and audience of the comment or behaviour, whether the individual was clear that they were expressing their own views and not those of the organisation, and whether there is a reputational risk to the employer.

What about manifesting employee views outside of work, for example on social media?

You may have some concerns about conflict extending to the public domain, especially as social media is currently a very febrile environment. If issues arise, you must take time to carefully consider the situation and gather all the facts before deciding on the best plan of action. You may wish to seek independent legal advice around what action to take from the range of possible options. Knee-jerk decisions and communications can be

damaging, or be discriminatory themselves. For example, in *Bailey v Garden Court Chambers*, response tweets sent on behalf of the employer saying that Allison Bailey's personal comments were under investigation were judged to be made in haste to minimise a Twitter storm and to have caused injury. There are complexities around views which are expressed by a member of staff outside of the workplace, including on social media, so you should have clear social media policies that support staff to understand appropriate conduct. This should include advice about how to clearly distance views from any association with your organisation, for example including explicit disclaimers that views expressed are personal.

Practice example:

Dealing with public conflict

For one large private sector employer who received some high-profile social media and press coverage in relation to its transgender and non-binary inclusion work, there were three key elements to responding to conflict that enters the public domain, including whether and how to comment publicly:

- 1 Take a step back and think about the whole range of feelings on the issue, not just the loudest voices.
- 2 Reflect on your organisational culture and values, and how the organisation's actions would best align with them.
- 3 Consider how – if at all – you want to respond, rather than immediately engage in a public argument.

C. Transgender and non-binary data management

Another area which often causes anxiety for transgender and non-binary people is the way in which their personal data is handled by an organisation. There are legal protections and guidelines for how various forms of data are collected, stored and used, with some specific ones which relate to transgender and non-binary people. For example, if someone has a Gender Recognition Certificate and you have obtained this information in an official capacity, unauthorised breaches of privacy may be a criminal matter under Section 22 of the Gender Recognition Act (2004).

The most important take away is that privacy is paramount. You should not share details about a transgender or non-binary person's gender identity or transition unless you have explicit agreement and instruction to do so by the person themselves. If you do have agreement, it should be shared on a need-to-know basis – with the person knowing who that information is being shared with and why.

The overarching principle should be that privacy is paramount. Information should only be shared consensually, even if a transgender or non-binary employee appears open about their experiences.

What can pose the biggest risks to data security and what can I do about this?

Most commonly, data breaches arise from poor systems communication. Updated records may not automatically filter through from one location to another, and historic, inaccurate information can be transferred from legacy systems.

To address this, you should have a named person within your organisation who has oversight of all systems and places where someone's gender may be known or implied and how they relate to one another. This includes personnel records, ID, email addresses, email threads, files, pensions, payroll, and outward-facing information such as web profiles.

Storing unnecessary data can also pose a risk. You should ensure that information about a previous gender or identity is only retained when legally essential. Examples of essential information may include right-to-work documents and security vetting. You should seek agreement with transgender and non-binary staff about who can access such records and how they will be stored.

Appropriate storage depends on the format of the data:

- Hard-copy data must be in a double-sealed envelope with the name(s) of the people allowed to access it stated, and then locked away.
- Digital data must be digitally protected and stored on a restricted system. If someone has a Gender Recognition Certificate (GRC) or personal information relates to medical treatment and you have acquired this information in an official capacity (such as during recruitment or in the course of employment), unauthorised breaches of privacy may be a criminal matter under Section 22 of the Gender Recognition Act (2004).

A person is protected from the point at which they apply for a GRC. In most cases, there is no justification for an employer to see a GRC. It could create legal risks to ask if somebody has one or request to see it. There are rare exceptions, such as establishing legal sex for a post with a genuine sex-based occupational requirement. Employers should take specific legal advice in each case. If this is the case, you must only request the information when essential, and handle it with extreme care.

Whether or not an employee has a GRC, they still have the right for their personal information to be kept safe and information about gender reassignment is classified as special category data, as it may reveal information about health. So, no information about someone's gender should be shared inappropriately. Special category data is singled out in the GDPR as likely to be more sensitive, and therefore requires additional protection.

An employee wishes to update their personnel records, what should I do?

Internally, you should adopt or design systems that can simply be changed on request, as this information is only needed for identification. An employee does not need a GRC to update their records. There are many legitimate reasons a transgender person might not have a GRC, including cost and bureaucracy. In addition, non-binary people may choose not to obtain a GRC because they cannot currently reflect non-binary identities.

When someone informs you they wish to change the name and/or gender they wish to be known by, thorough IT searches should be run for a previous identity to ensure all relevant changes are made as far as is possible. You may want to explicitly include information about this in your data retention policy.

If you use third-party suppliers for systems, you may come across challenges when it comes to updating records. Therefore, if you are involved in procurement, you should look to reach an agreement on how records can be changed as seamlessly as possible.

How can I design inclusive systems and records?

There are a few steps you can take so internal systems can be more inclusive of a range of gender identities and experiences. This includes:

- making sure internal systems and surveys include options other than 'male' and 'female', including non-binary and self-described
- considering whether titles are necessary – if so, offer a range of options, including no title.

How should I handle reporting statutory data, for example to HMRC?

HMRC does not update the sex marker on its file unless someone has a GRC. However, as long as it is informed someone is transitioning, submitted data should be able to have a different marker without posing problems. The issue is more complex for transgender or non-binary people who do not identify with a binary gender (including international colleagues with passports including a third gender marker), as only an M/F response is permitted. The system will not reflect their lived experience, which may cause legitimate frustration and distress. To address this, organisations should have open and compassionate conversations with any employees who may be affected by binary statutory reporting.

Practice example

A large public sector organisation built a data management service for employees. There is a named email contact for requests who then coordinates all changes behind the scenes. This removes the need for employees to retell their story to multiple people or navigate complex systems.

Its approach to recording and reporting for non-binary staff centred around a two-tier system and clear communication strategy. Internal systems have been updated so staff can record their gender in a way that better reflects their identities, including self-defined options. For external reporting, impacted members of staff are informed of the precise purpose and reason a binary marker is required (namely statutory reporting) and an open discussion is had about how to proceed.

There are further considerations when it comes to other specified reporting requirements, such as gender pay gaps. The current legislation does not define 'men' and 'women' and makes no mention of how to report data for transgender and non-binary staff. This means there is a lack of clarity as to whether the (binary) HMRC marker or other internal (self-reported) data should be used, although there appears more of a consensus that self-reported data is appropriate and might be less risky legally. Furthermore, binary reporting requirements can mean non-binary people may be excluded or recorded in a way that does not reflect their lived experience, although internal reporting can take a more inclusive perspective. From an employee relations perspective, you may wish to have conversations or consult with transgender and non-binary staff to discuss how they wish to be reported and identify any points that should be included in the accompanying reporting narrative. You may also wish to reflect on how to best achieve transparency and accountability in a way that recognises and acknowledges potential inequalities.

I want to collect data for equalities monitoring purposes or to improve workplace practices, how should I approach this?

You may wish to use a variety of data sources to improve your organisational decision making and operations, including equal opportunities monitoring forms, recruitment information, HR records and insights from staff. However, negative workplace experiences can mean that staff from disadvantaged backgrounds feel uncomfortable sharing information, including some transgender and non-binary staff. Establishing trust about why data is being collected and how it will be used is paramount.

If you are responsible for collecting or processing data, you can take several steps to make transgender and non-binary people more confident in the process:

- Identify a clear and meaningful purpose for collecting the data. This might include preventing turnover, addressing pay or grade discrepancies, tackling staff (dis)satisfaction, improving talent management, or targeting initiatives to elevate and celebrate (such as promotion of leadership programmes).
- Design inclusive surveys or other research tools, such as offering a range of genders to select from, including self-described options.
- Explicitly communicate the reason why you are collecting the data.
- Explain how you will ensure confidentiality at all stages of the process.
- Always allow people the choice not to provide information about sex or gender if they would rather not.
- Turn words into action and promote your response, whether that means changing practices or dealing with a complaint. This is essential to create a genuine culture of trust within the organisation.

There may often only be a small number of transgender and non-binary employees within an organisation, but you should take any indication of problems seriously, regardless of the number of respondents. Therefore, qualitative methods of seeking employee voice may sometimes produce more meaningful data.

6 Appendix A: List of employment tribunal and employment appeal tribunal cases

Below is a list of the most recent and significant cases we reviewed at the time of writing the guidance, but this will be updated as part of this guide's regular review.

Forstater v CDG Europe

Original employment tribunal, case number 2200909/2019, 2019 WL 07580219

Employment appeal tribunal, ukeat/0105/20/joj

Second employment tribunal, case number 2200909/2019, 2022 WL 02703899

Bailey v Garden Court Chambers

Employment tribunal, case number 2202172/2020B

Higgs v Farmour's School

Employment tribunal, case number: 1401264/2019

Employment appeal tribunal, ea-2020-000896-joj

Mackereth v DWP

Employment tribunal, case number 1304602/2018

Employment appeal tribunal, ea-2019-001051-la

Mrs Kristie Higgs v Farmor School Archbishops Council of the Church of England

Case number EA-2020-000896-JOJ

X v Y

Employment appeal tribunal, ukeat/0302/18/rn

Taylor v Jaguar Land Rover

Employment tribunal, case number 1304471/2018

V v Sheffield Teaching Hospitals

Employment tribunal, case numbers 1806836/2020, 1803272/2021, 1803682/2021, 1805577/2021

7 Appendix B: Inclusive language

When thinking about terminologies you may wish to:

- understand legal definitions (such as the UK Equality Act's use of the term 'transsexual') but know how these differ from those used in everyday life (transgender is often the preferred term now)
- recognise people's anxieties about having to learn new terms and reassure staff that it's about understanding the key terms well, rather than knowing every related term
- acknowledge that there will be different views within LGBT+ communities; for example, some may not identify with the terminology 'queer', given its historic usage as a slur, whilst it may be other people's preferred term
- reassure people about how to respond to innocent mistakes – politely correcting an error and moving on is likely to be the best approach, but it is important to note that behaviour may be deemed as harassment regardless of intent.

When incorporating inclusive language in various policies you may wish to:

- avoid being too prescriptive or authoritative, but instead offer general guidance based on a deeper and broader understanding
- speak to your transgender and non-binary staff and/or consult with external organisations to identify terms that staff are most comfortable with, rather than dictating the language that should be used
- consider when to use additive language and when to use gender-inclusive terms. An example of additive language might be including a reference to "women and people experiencing the menopause" rather than saying only "women" or only "people" in wellbeing policies. An example of gender-inclusive language would be using terms such as "parents" or "families", rather than excluding any groups.

When thinking about and implementing pronoun usage policies:

- invite people to share their pronouns if they want to but do not make it mandatory or imply that it is. There is a wide range of legitimate reasons people may not want to share, including transgender people themselves
- understand that some people may use more than one pronoun, such as he/they or gender-neutral pronouns such as they/them, or they may not wish to use any pronouns. Likewise, some people may feel more comfortable with certain pronouns being used in one context but not another, such as when interacting with close colleagues versus in a public setting. Be led by the individual
- communicate the benefits for a range of different people, not just transgender and non-binary people, such as international colleagues or those with less typically gendered names

- allow it to develop organically with some encouragement and support, and listen and involve staff in understanding which approaches and communication channels (such as via email signatures, in marketing comms, in virtual meetings, etc) may be best placed to introduce and embed pronoun usage
- build in support for, and develop buy-in from, managers. Managers should be made aware of how pronoun policies and usage should be implemented in their teams. Provide support and encouragement so they feel confident in their approach and in alleviating any concerns or anxieties in their team.

8 Appendix C: What is bullying, harassment and victimisation?

Table 1: What is bullying, harassment, discrimination and victimisation?

	Definition	Example
Harassment	Unwanted behaviour that either violates a person's dignity or creates a hostile, degrading, humiliating or offensive environment for a person. Behaviour can be deemed harassment regardless of the intention behind behaviour or reaction after the event. Someone does not need to have the protected characteristic for unwanted behaviour to constitute harassment.	Intentionally misgendering or deadnaming a transgender or non-binary person or spreading gossip or jokes about a trans person.
Direct discrimination	Being treated less favourably than another person due to having a protected characteristic. This also includes discrimination because of perceptions or assumptions about a person's characteristics, regardless of whether these are correct or not. Direct discrimination can also involve being treated unfairly due to the protected characteristic of someone you know or associate with. This is known as 'discrimination by association'	An employer moves a transgender member of staff away from a customer-facing role because they think their clients may not want a transgender person serving them.
Indirect discrimination	Where rules or arrangements in practice put those with a protected characteristic at a disadvantage compared to others who do not share this characteristic. This can sometimes be permitted if an organisation can clearly demonstrate there is a good reason for the discrimination ie, it is a proportionate means of achieving a legitimate aim.	Organisational policy states that ID cards must feature the photo from an employee's first day at work, even if they have since transitioned.

Victimisation	Being treated unfairly because you made or supported a complaint raised related to a protected characteristic or were thought to have done so.	A colleague of a transgender person gives evidence as a witness to support a claim of harassment. After that, their boss starts treating them unfairly.
Bullying	Although there is no legal definition of bullying, it is understood as unwanted behaviour that is a) offensive, intimidating, malicious, or insulting, or b) an abuse or misuse of power that undermines, humiliates or causes harm. It may be one-off or persistent, occur in various settings and not always be noticed by others.	Spreading hurtful rumours, undermining or putting someone down in meetings, giving someone extra tasks to do and not others.

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Appendix D: Transitioning at work action plan prompts

A number of organisations have produced detailed guidance on things that may need to be considered as part of a transition at work, including [Gendered Intelligence](#), [GIRES](#), [Equality Challenge Unit](#) and the [Government Equalities Office](#).

If you are a line manager or people professional supporting a colleague through their transition, you should remain aware that no transition will look the same, as each journey is very different. So, these prompts should be adapted to each person and organisation to be fit for purpose. In addition, the person transitioning should always have ultimate agency for the journey they wish to take.

With that in mind, some points that may be helpful to consider include:

Providing support

- Who will be the named confidential contact for the employee?
- How will HR and other support be provided in a sensitive way?
- Do the employee or their loved ones need any additional support?
- Do line managers or colleagues require any additional training?
- How will the organisation protect the employee from any harassment by third parties?

Returning to work

- When will the employee start work in their affirmed gender?
- What will happen on the first day back?

Supporting the transition

- Only if it is requested specifically by the trans employee, how will (temporary) redeployment or flexible working be arranged?
- Do any risk assessments need to be carried out? For example, avoiding heavy lifting post-surgery or whilst wearing a binder.

Sharing information

- How and when will managers and colleagues be informed? Will this be verbal or written? Will this be individual or as part of a group? What information should be included? Do any ground rules need to be established?
- How (if at all) would the employee like to answer any questions from colleagues? Alternatively, which specialist organisations, trainers or professionals can colleagues be signposted to if they would rather not answer questions?
- How will the transition be dealt with amongst customers, clients, suppliers or other third parties?

Changing information

- How can essential information be consensually shared with HR, payroll and line management?
- Where are all the places name(s) and personal data that will need to be changed, by whom and when? Internally, this may involve a wide range of locations including:
 - name badges
 - business cards
 - building passes
 - security clearances
 - web profiles
 - photos
 - IT profiles
 - email
 - voicemail
 - intranet
 - work-based social media
 - union membership
 - uniform
 - awards
 - DBS checks
 - payroll
 - pension records
 - previous general HR records (such as appraisal notes)
 - copies of recruitment documents
 - local IT files, publications (hard copy and downloadable)
 - professional memberships and subscriptions.
- For genderfluid employees, flexibility may be required, such as providing multiple ID cards with different names. External records, data and contact details may also need to be changed.
- How will sensitive information or records that cannot be changed be securely stored?
- Do any insurance arrangements need to be evaluated?
- If medical insurance is provided, what (if anything) might this cover?

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