



# Guidance: Gender Identity and Intersex

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## Introduction

### Purpose and scope

1. This guidance aims to support employees, and those managing employees, who are transgender, non-binary and/or intersex.
2. It also aims to raise awareness of transgender, non-binary and intersex issues to help all employees contribute to an inclusive and supportive workplace. The Guide: Supporting Transgender, Non-binary and Intersex Colleagues is also available.
3. It is important to remember that employees who are not themselves transgender, non-binary or intersex may be supporting friends and/or family members who are and may need support and understanding at work.



4. The guidance applies to all civil servants employed by the Insolvency Service, including those on probation and fixed-term appointments. The principles also apply to anyone who works alongside civil servants but is not an employee of the Insolvency Service, such as contractors, consultants and agency workers.

### Context

#### Diversity and Inclusion in the Civil Service

5. In October 2017, the Civil Service launched *A Brilliant Civil Service: becoming the UK's most inclusive employer*. This diversity and inclusion strategy set the Civil Service the ambition of becoming the most inclusive employer in the UK by 2020. Achieving this will mean that the Civil Service can attract, develop and retain the most diverse talent.
6. This guidance is applicable to all gender identities, so is inclusive of all transgender and non-binary identities, and also applies to intersex employees.

#### Diversity and Inclusion in the Insolvency Service

7. The agency Diversity & Inclusion Strategy sets out our collective and explicit commitment to ensuring the agency is an equal, diverse and inclusive employer where people feel included and supported, where innovation and creativity are enabled, where organisational performance is high and where customer service and organisational reputation are excellent.

### Gender identity

8. Gender identity is the personal sense of one's own gender. For some people their gender identity matches the sex they were assigned at birth. For others, it does not match. Where it does not, and distress is caused, this is known as gender dysphoria.
9. Gender dysphoria is a recognised condition that can be formally confirmed by a doctor, should an individual wish to seek medical support.
10. In the Insolvency Service and the Civil Service, an individual does not need to be experiencing gender dysphoria or have a formal diagnosis to be treated in the gender in which they identify, if any.
11. To provide an inclusive and supportive workplace, the Insolvency Service must respect and support the gender identities and expressions of all its employees.
12. For transgender, non-binary and/or intersex people it is not always possible to turn to family for support. They may find that family members are resistant or even hostile. Their workplace may be the place that they feel safe and supported to start their transitioning journey.
13. This may mean expressing their gender at work before doing so in front of their family and friends outside of work. People sometimes form a "family of choice" - a circle of friends who can be relied upon to support them and this may be a workplace group. It is also worth noting that some people feel comfortable expressing their gender to colleagues before they feel comfortable expressing their gender to customers.



## Sexual orientation

14. Sexual orientation is a person's emotional, romantic and/or sexual attraction to another person. It is separate to gender identity and is therefore not discussed in this guidance.

## What does transgender mean?

15. Transgender is an umbrella term describing people whose gender does not match the gender they were assigned at birth. This can include some intersex people, but many intersex people are not transgender. This therefore includes:
- trans men - people registered female at birth but identifying as male
  - trans women - people registered male at birth but identifying as female
  - non-binary people.
16. Understanding of sex and gender and the terminology around it is constantly evolving and many other terms are used under the transgender and non-binary umbrellas. Individuals will choose the terms that are right for them.
17. Transgender individuals may decide to start presenting in a gender expression that matches their gender identity. This is called gender transition. The steps taken to do this are unique to individuals and may or may not involve medical interventions.
18. Gender identity reflects an individual's inward sense of self, therefore, a transition is not necessarily a change of gender identity. The changes made are often to outward gender expression, which may involve surgical interventions.
19. Early stages of gender transition may involve dressing in a manner that reflects the societal norms of an individual's gender identity. From there, a doctor may prescribe hormone therapy and in some instances surgery. To apply for and gain legal recognition in their affirmed gender, an individual must first spend a minimum of two years living in that gender. This is called "real life experience".
20. In the Insolvency Service and the Civil Service, a transgender person will be supported whatever their personal transition entails.
21. The Toolkit: Supporting Transitioning at Work is available to provide detailed and specific workplace support to transitioning employees and their managers.

## What does non-binary mean?

22. Non-binary is also an umbrella term. It includes people whose gender (or lack of gender) does not fit completely within the definition of male or female, and
- do not identify as either male or female, or
  - identify as both male and female, or
  - have a flexible gender expression, or



- take another approach to gender entirely.
23. Gender identities often considered to be under the non-binary umbrella include, for example, genderfluid, where an individual's gender expression is flexible, and agender, where an individual doesn't identify with any gender at all. Many other terms are also used.
24. Non-binary people may also decide to present in a gender expression that matches their gender identity. This may involve hormone therapy and/or surgery. Where an individual identifies as genderfluid, their gender expression may be different from day to day. There is no one way to either be or look non-binary, everybody is individual.

### What does intersex mean?

25. Intersex is a term for people with a mix of both sex characteristics that would be typically expected of males and sex characteristics that would be typically expected of females (sex characteristics include hormones, chromosomes and external/internal reproductive organs).<sup>1</sup>
26. Intersex individuals can have varying gender identities and their variations may or may not be accompanied by gender dysphoria.
27. Intersex individuals may need to or choose to access medical treatment. This can be to:
- change sexual characteristics
  - manage hormone levels
  - maintain general health, for example, to prevent issues with bone density caused by hormonal imbalances.
28. In many instances individuals discover that they have intersex variations later in life, sometimes by chance. This can have an impact on their mental health and wellbeing.
29. The Toolkit: Supporting Intersex Employees is available to provide detailed and specific workplace support.

## The Legal Framework

### Equality Act 2010

30. [The Equality Act 2010](#) sets down gender reassignment as a protected characteristic. This makes it unlawful to discriminate against, harass or victimise a person because:
- they are transsexual

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<sup>1</sup> We use the word "intersex" as it is a current and widely used term recognised by civil servants; it also demonstrates the policy intent of inclusion for people who are intersex where there is an impact on their gender identity. The Government Equalities Office undertook a consultation in early 2019, on variations in sex characteristics (VSCs), which includes intersex variations. This included gathering views on terminology. Findings will be published at a later date



- they are perceived to be transsexual
- they have an association with a transsexual person.

31. Transsexual is the term used in the legislation to describe a person who:

- is proposing to undergo a process (or part of a process) to reassign their sex; or
- is undergoing a process (or part of a process) to reassign their sex; or
- has undergone a process (or part of a process) to reassign their sex.

32. This process does not need to entail any specific type of treatment or surgery. Protection begins when the individual proposes reassignment.

33. Although transsexual is the term used in legislation, transgender is now preferred and therefore used in this guidance.

34. While nonbinary and intersex people do not currently have all of the same legal protections as binary trans people, the Insolvency Service aims to treat nonbinary and intersex people equally to those who have more legal protections.

### **Direct discrimination**

35. Direct discrimination is where a person is treated less favourably than others due to:

- their own gender transition
- the gender transition of someone who they are associated with. This is known as associative discrimination
- a perception that they may be considering, undergoing or have undergone gender transition is known as discrimination by perception. This perception does not have to be correct.

**Example:** A line manager asks an individual who is transitioning to temporarily move to a different, non-customer facing role, because they feel this is in the best interests of the individual and the business. This is direct discrimination because it is based on the fact the individual is transitioning.

### **Indirect discrimination**

36. Indirect discrimination is where someone is treated less favourably than others by a provision, criterion or practice that is applied equally but has the effect of disadvantaging them.

**Example:** Requiring applicants to show a birth certificate at a job interview would mean that a transgender applicant may have to reveal their gender history. This is likely to be indirect discrimination. A different form of identification should be used.

### **Harassment**



37. Harassment is unwanted conduct related to gender transition. It must have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. This can include:

- bullying
- threats
- excluding someone
- asking intrusive questions.

**Example:** Refusing to accept a transgender person in their affirmed gender, by persistently referring to a trans woman as "he" or "him", is likely to be harassment.

38. Those who support transgender, non-binary and intersex people can also be exposed to harassment.

### Victimisation

39. Victimisation is when an employee suffers a "detriment" – something that causes disadvantage, damage, harm or loss because of:

- making an allegation of discrimination, and/or
- supporting a complaint of discrimination, and/or
- giving evidence relating to a complaint about discrimination, and/or
- raising a grievance concerning equality or discrimination, and/or
- doing anything else for the purposes of (or in connection with) the Equality Act, such as bringing an employment tribunal claim of discrimination.

40. Victimisation can also occur because an employee is suspected of doing one or more of these things, or because it is believed they may do so.

41. Those who support transgender, non-binary and intersex people can also be exposed to victimisation.

### Genuine occupational requirements

42. In some very limited circumstances employers can specify that a genuine occupational requirement of a job means that they cannot employ a transgender person in it. HR advice should always be sought where vacancy holders think this may apply. HR advice should be sought via HR.Contact or your [HR Business Partner](#).

### Public Sector Equality Duty

43. The Public Sector Equality Duty (PSED) is a legal duty under the Equality Act for public bodies including the Civil Service to take account of equality in their day-to-day work. The duty is to consider the impact of policies on people who share protected characteristics.



Therefore, public bodies including the Civil Service must take account of its policies' impact on transgender people.

### Gender Recognition Act 2004

44. The [Gender Recognition Act 2004](#) allows individuals to gain legal recognition in their affirmed gender by being granted a Gender Recognition Certificate (GRC). After a GRC is granted, a new birth certificate can be issued showing the individual's legal sex as being that which matches their gender identity.
45. Section 22 of the Act makes it a criminal offence for a person in an official capacity to disclose that an individual has applied for or received a GRC without the permission of that individual. Individuals who breach this law are personally liable to prosecution. There are some exemptions and these are tightly controlled – if you think an exemption may be applicable, always speak to HR via HR.Contact.
46. Many transgender people choose not to apply for a GRC for a variety of reasons. the Insolvency Service treats individuals in the gender that is right for them regardless of whether or not they have a GRC.

### Other relevant legislation

#### Human Rights Act 1998

47. Article 8 of the [Human Rights Act 1998](#) gives everyone the right to respect for their private and family life.
48. Article 14 provides protection from discrimination in respect of the rights and freedoms within the [Human Rights Act 1998](#).

#### Data Protection Act 2018 and the General Data Protection Regulation (GDPR)

49. The [Data Protection Act 2018](#) and GDPR regulate the processing of personal information.

#### Pensions Act 1995

50. The [Pensions Act 1995](#) is legislation to improve the running of pension schemes. A significant change was the phasing in of equalisation of state pension ages for men and women over a ten-year period between April 2010 and 2020.

#### Employment Rights Act 1996

51. The [Employment Rights Act 1996](#) relates to individual employment rights; these do not depend on whether a person has a GRC.

#### Protection from Harassment Act 1997

52. The [Protection from Harassment Act 1997](#) covers a wide range of behaviour, including behaviour that alarms or distresses the victim. This includes individuals who experience acts of hostility or harassment because of sexual orientation or transgender identity whilst at work.





53. The criminal offences are pursuing a course of conduct amounting to harassment and a more serious offence where the conduct puts the victim in fear of violence.
- Harassing a person includes alarming the person or causing the person distress.
  - A “course of conduct”, which can include speech, must normally involve conduct on at least two occasions.
54. In addition to the criminal offences, a civil court can impose civil injunctions in harassment cases as well as awarding damages to the victim for the harassment. Breach of such an injunction is a criminal offence.
55. Employers can be vicariously liable under the Equality Act for acts of harassment committed by their employees in the course of their employment.

## A transgender, non-binary and intersex inclusive workplace

56. An inclusive workplace is one that provides everyone with a sense of belonging, allows everyone to be their authentic selves, and ensures they have a voice in their teams and the organisation. When employees feel respected, valued and are able to bring their whole selves to work, they are more likely to be productive and motivated.
57. Showing respect to all colleagues, regardless of their sex and gender has a positive impact on employee loyalty and talent retention.

### Gender expression at work

58. All individuals have the right to express their identity at work and present in their gender. This could mean:
- changing their outward appearance, including clothing
  - changing the name they use at work
  - using any appropriate single sex toilets and other facilities
  - changing their pronouns
  - having a flexible expression that differs from day to day.

### Pronouns

59. Some people include their pronouns, for example “he/him”, “she/her” or “they/them”, as part of their email signature.
60. Where individuals are unsure of others’ pronouns, they should ask. However, they should remain sensitive and ensure that questions do not stray into invasion of privacy.

**Example:** A new member of a team becomes aware that one of their colleagues is non-binary, but because they have only just joined, they are not aware of what pronouns their non-binary colleague uses. Asking the colleague what their pronouns are is a good approach but asking





how long they had been using them or what their pronouns may have been in the past could be invasive.

### Facilities

61. It is assumed that the individual knows which facilities are the best match for their gender identity and expression. Some transgender, non-binary and intersex individuals may feel most comfortable using gender neutral facilities where present, but this is a matter of personal choice.

**Example:** A trans man who has recently transitioned wishes to build confidence in his new gender expression before starting to use male facilities, so makes the decision to use a gender neutral toilet until he feels more comfortable using the male toilets. He should not be asked to use gender neutral facilities; this is completely his choice.

### Information for colleagues

62. Information for colleagues is available in the Colleague Guide: Supporting Transgender, Non-binary and Intersex Colleagues. This can help colleagues of transgender, non-binary and intersex employees understand some of the relevant issues and support inclusiveness.

### Networks and other support

63. The Insolvency Service has an active LGBT+ Network, providing support for colleagues and promoting inclusivity across the agency. They can be contacted via [LGBTNetwork@insolvency.gov.uk](mailto:LGBTNetwork@insolvency.gov.uk)
64. The Insolvency Service has a network of LGBT+ Allies that can be distinguished by their LGBT+ Network lanyards and pin badges. We also have a Diversity Forum that covers all Diversity & Inclusion aspects and improvement throughout the agency. We also have HR Business Partners that can be consulted for any advice or support.
65. a:gender is the inclusive support network for staff in government departments and agencies, covering all aspects of gender reassignment, gender identity, gender expression and intersex.

### Annual events

66. There are many annual events relating to transgender, non-binary and intersex history and experience. Managers and employees may wish to mark these events and raise awareness. These include:
  - International Transgender Day of Visibility (31 March) - a celebration of transgender people and raiser of awareness of discrimination
  - Intersex Awareness Day (26 October) - a day to raise awareness of people with intersex variations
  - Transgender Day of Remembrance (20 November) - a day to honour the memory of people who have lost their lives as a result of transphobia.



67. This list is not exhaustive and there are other events that happen throughout the year that celebrate our differences.

### Confidentiality

68. Transgender, non-binary and intersex employees have a right to privacy in respect of their transgender and medical status. It is essential that information is only shared where necessary and with the consent of the transitioning employee. Consent must be obtained at every point where information needs to be shared. Disclosure without consent can be distressing for the employee concerned and in some instances breach:
- the Data Protection Act 2018
  - the Gender Recognition Act 2004
  - the Equality Act 2010.
69. The Insolvency Service has the responsibility to handle all employee data in line with the Data Protection Act 2018 (DPA). Gender history forms part of an individual's special category data under the DPA and privacy and confidentiality must be maintained.
70. In addition, Section 22 of the Gender Recognition Act 2004 makes it a criminal offence for a person who has obtained "protected information" in an official capacity to disclose that information to any other person. Where an individual has acquired a Gender Recognition Certificate (GRC), individuals can be prosecuted where for example, they disclose an individual's gender history.
71. Managers and other individuals who come into any information about an individual's gender history should follow the Insolvency Service's procedures for handling confidential data. Where unsure, they should always contact HR via HR.Contact for advice.
72. Where managers feel that they may need to make exceptions to the usual Insolvency Service information management processes to protect an individual's gender history they should contact HR for advice via HR.Contact.

**Example:** If a Workplace Adjustment Passport contains information about adjustments made due to gender transition, it should be held only by those who the individual authorises and not on a central HR system.

### Inclusive recruitment and selection

73. The Civil Service and the Insolvency Service are committed to ensuring that transgender, non-binary and intersex people are treated with respect and that it does not discriminate unlawfully.
74. There is separate guidance on Gender Recognition Certificates in recruitment which details how protected information, as defined in section 22 of the Gender Recognition Act 2004 (GRA), should be handled and the responsibilities of those involved in recruitment.



## Bullying, harassment and discrimination

### Bullying, harassment and discrimination in the Civil Service

75. The Civil Service has a zero tolerance approach to bullying, harassment and discrimination. Those found to be bullying, and/or harassing and/or discriminating against employees or customers can face disciplinary procedures including charges of gross misconduct leading to dismissal.
76. Bullying, harassment and discrimination are in direct conflict with the Civil Service values of honesty, objectivity, impartiality and integrity. It is important that all employees feel respected and treated fairly within the workplace.
77. Transgender, non-binary and intersex individuals are entitled to the same levels of respect and fairness as others in life and the workplace. Individuals are entitled to their views and beliefs. However, this does not mean that they are entitled to express these in a way that may cause distress to others in the workplace.
78. Civil Service survey results indicate that a higher proportion of transgender employees are likely to report experiencing bullying, harassment and discrimination at work.
79. The Insolvency Service has a Dignity at Work policy, and our Dispute Resolution policy should be followed if an employee, colleague or manager has concerns about bullying, harassment and discrimination.
80. Bullying is offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
81. Harassment is unwanted actions or comments that are demeaning and unacceptable to the recipient. It may be related to any personal characteristic of the individual and may be persistent or an isolated incident.
82. Discrimination is treating a person or group of people less favourably because they have one of the "protected characteristics", which are:
  - age
  - disability
  - gender reassignment
  - marriage and civil partnership
  - race, religion or belief
  - sex
  - sexual orientation.
83. People may experience bullying, harassment or discrimination regardless of how they identify. Transphobia is the specific fear or dislike of someone because they are transgender. This includes refusing to accept an individual's gender identity.



## Examples of transgender-related inappropriate treatment at work

84. There are some specific forms of possible transphobic bullying, harassing and discriminatory behaviours at work. These include but are not restricted to deadnaming, misgendering and outing.
85. Using the name that a transgender or non-binary person has decided to no longer use, often their birth name, is called deadnaming. Changing a name to reflect gender identity can form an important part of transition and deadnaming, which can be inadvertent or deliberate, can be extremely hurtful.

**Example:** Asking a transgender person about a previous name or reminding them that you knew them under a different name.

86. Misgendering is using a word, such as a pronoun or form of address, which does not correctly reflect an individual's gender identity and may happen in person, over the phone or in writing. This can include refusing to accept an individual's gender identity.

**Example:** Referring to a trans man as "she", or "Miss".

**Example:** If a non-binary person informs their team that their pronouns are "they" and "their", and a colleague accidentally refers to them as "she" and apologises, the manager generally wouldn't need to intervene. If this becomes persistent, or there is a suspicion that it may be deliberate, the manager should consider action.

87. Incidents of deadnaming and misgendering can be accidental and managers and individuals should be mindful that mistakes will sometimes happen when an individual begins their transition. If this occurs, the individual should discreetly apologise, correct themselves and move on from the incident. If they don't take this action, if the recipient feels comfortable in doing so, they should correct the person who made the mistake, saying that they understand a mistake has been made, and again, move on.
88. However, deliberate, continued and/or repeated incidents are unacceptable and should be dealt with using the bullying, harassment and discrimination policy.
89. Outing is disclosing a person's transgender, non-binary or intersex status without their consent.

**Example:** Informing the rest of your office that an individual has undergone gender transition, when you are aware that their wish was for only their immediate team to know.

90. Managers have a key role in creating an inclusive environment and preventing incidents of bullying, harassment and discrimination. They should be alert to the behaviours of other employees and tackle inappropriate behaviour where it arises. Not doing so risks giving a green light to others to behave inappropriately.
91. This can include verbal and non-verbal microbehaviours such as tutting, eye-rolling and showing disinterest when another individual is speaking.

**Example:** A manager notices that a member of their team persistently leans back in their chair and/or rolls their eyes when a transgender colleague is speaking. They should challenge the



individual privately, explain the importance of behaving inclusively and respect, as well as considering training opportunities and/or mentoring. They should also make them aware of the agency's Standards of Behaviour and the [Dignity at Work](#) policy and if the behaviour continues, disciplinary action may be taken.

92. The gender identities of individuals must be respected at all times. It remains unacceptable to use former names and/or incorrect pronouns while the individual concerned is not present.

### Wellbeing and mental health

93. Transgender, non-binary and intersex people can face challenges to their physical and mental wellbeing for many different reasons. Some examples of this can be:
- distress caused by gender dysphoria
  - negative reactions from family, friends, colleagues and the general public
  - the sudden and unexpected discovery of an intersex variation
  - health concerns unrelated to gender identity.
94. Research has shown that transgender individuals are at a higher risk than the general population of self-harm and suicide as a result of the above.
95. As with all employees, the Insolvency Service has a duty of care and managers should watch for symptoms of mental ill health. Generic mental health awareness guidance such as Mental Health - A Guide for Managers may be helpful for further information.
96. The agency's Employee Assistance Programme (EAP) is available 24 hours a day, 365 days a year, to both employees and managers. The EAP can advise on a range of issues and arrange counselling where required.
97. Employees and managers can also make use of the agency employee network groups, Mental Health First Aiders and the Employee Assistance Representatives.
98. Occupational health may also be able to provide managers and individuals with workplace advice and support.
99. Individuals may need more in-depth, specialist support and advice. It is best practice to recommend that individuals speak to their GP or other medical professional if in any doubt.
100. Transgender, non-binary and intersex individuals may have hormone therapy to align secondary sexual characteristics such as body hair to their gender identity. This is usually a lifelong treatment and dosages may need to be adjusted over time. Managers should be mindful that symptoms of hormone imbalances may occur. These could include a variety of symptoms, for example, joint stiffness and/or reduced concentration.
101. There are a number of specific impacts on health and wellbeing for those who transition. Managers should be aware of these and provide appropriate support.



## Further information

### Additional guidance and products

#### **Toolkit: Supporting Transitioning at Work**

102. This toolkit contains information for transgender individuals and managers, where an individual transitions while working for the Insolvency Service.

#### **Colleague Guide: Supporting Transgender, Non-binary and Intersex Colleagues**

103. This toolkit contains information for colleagues of transgender, non-binary and intersex individuals on different gender identities, intersex and support they can offer.

#### **Supporting Intersex Employees Toolkit**

104. This toolkit contains information for intersex individuals and managers, including explanations of intersex variations and how to support intersex employees.

#### **Toolkit: Supporting Parents, Carers and Guardians of Transgender, Non-binary and Intersex Young People**

105. This toolkit contains information for parents, carers and guardians of transgender young people and their managers, focusing on workplace support.

### Support

#### **a:gender**

106. a:gender is the inclusive support network for staff in government departments and agencies, covering all aspects of gender reassignment, gender identity, gender expression and intersex.

#### **LGBT+ Networks**

107. The Civil Service LGBT+ Network helps to create a more diverse, inclusive and equal place to work for lesbian, gay, bisexual and trans civil servants.
108. The Insolvency Service have an active LGBT+ Network, who can be contacted for support and advice.

#### **Employee Assistance Programme**

109. The Insolvency Service's Employee Assistance Programme is available 24 hours a day, 365 days a year, to both employees and managers. The EAP can advise on a range of issues and arrange counselling where required.
110. See paragraphs 63 to 65 for additional support.

### Outside organisations

111. The outside organisations listed provide information about transgender, non-binary and intersex issues. Positions taken by outside organisations may not always align with those



of the Insolvency Service and providing these links does not constitute endorsement of any particular position.

112. [Stonewall](#) empower LGBT people to be their authentic selves, enabling them to realise and achieve their full potential, and empowers LGBT people and allies to create positive change.
113. [The Gender Identity Research and Education Society \(GIREs\)](#) is an organisation whose purpose is to improve the lives of trans and gender non-conforming people of all ages, including those who are non-binary and non-gender.
114. [The United Kingdom Intersex Association](#) is an education, advocacy, campaigning and support organisation which works on behalf of intersex people.