

The Sex Matters guide to...

Pronouns at work



A briefing for employers and employees thinking about workplace rules and policies for the use of 'gender pronouns' at work, especially interactions between colleagues, professional networks and clients.

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Sex Matters is a human rights organisation campaigning for clarity about sex in law, policy and language

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Introduction

Pronouns are a class of everyday words we use in place of nouns – this, we, who, whom, that, I, me, you, it, he, she, they and so on. We use them to avoid repeating the names of things, or when the details of those things are unknown. People use them instinctively in everyday speech and writing.

In English, third-person personal pronouns – the words we use to talk about people and animals (such as he, she or they) have different forms, which relate to the number of individuals (singular or plural) and their sex (male or female).

Some people use pronouns to refer to the idea of a person's innate sense of gender identity rather than their sex. More recently 'neo-pronouns' such as zie have been introduced by people who don't wish to be referred to as either he or she.

Belief discrimination and the law

The Equality Act protects against direct and indirect discrimination based on belief (including lack of belief). The recent case of *Forstater v CGD Europe and Others*¹ clarified the law on belief discrimination, finding that a 'gender-critical' belief (the belief that sex is real, binary, immutable and important), and lack of belief in gender-identity ideology (the belief that everyone has a gender identity which is on a spectrum and may be fixed or fluid, and that this should override their physical sex) are both protected under the category of 'religion or belief'.

This is helpful because employers are used to accommodating staff and customers with different beliefs and associated observances. For example, employees can be expected to talk about other people's religions (or avoid talking about them) with a degree of respect, and in practice to not sabotage their religious practice such as dietary rules or prayer times or spaces. But they are not expected to participate in prayers, or practices such as saying 'Peace be upon him' after the name of Muhammad, or profess to believe in other people's gods or do things which deny their own beliefs.

There are many situations where employers may require employees to use particular forms of words in the course of their jobs and to refrain from saying other things. For example, retail staff may be required to say 'Have a nice day', and teachers may be

¹ <https://www.gov.uk/employment-appeal-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-ukeat-slash-0105-slash-20-slash-joj>

required to refer to each other as Mr or Mrs So-and-so when talking to students. Employers can have policies on acceptable use of social media that constrain what employees can say and how they say it, even in the course of their personal lives. But they should consider whether any such policy results in indirect discrimination.

Indirect discrimination occurs when a rule (called a 'provision criterion or practice') that is applied to all staff, customers or others protected by the Equality Act 2010 puts certain individuals at a disadvantage because of a protected characteristic. If the individual can prove this, they may be able to make a claim for indirect discrimination.

There is the potential for rules and policies about pronouns to be indirect discrimination against those with gender-critical beliefs, or those who do not share a belief in gender identity, or indeed against transgender people who are not 'out'. This briefing considers two sets of rules and policies about pronouns:

- **'State your pronouns'** where employers encourage staff to include pronouns in email signatures, organisational and social-media bios, on name badges and application forms, and sometimes even at the start of meetings.
- **'Use preferred pronouns'** where an employee requests people to refer to them with different pronouns from what they would naturally use; and an employer seeks to enforce this.

Can you decline to state your pronouns?

Some people wish to announce their pronouns as a show of allyship with transgender people; some are willing to go along with it for a quiet life; some think it is an embarrassing and unnecessary affectation; some see it as a pledge of allegiance with a belief system they do not share.

Can your employer require you to 'state your pronouns'? There have been no legal cases about this. But we think not: employees are entitled to decline to take part in this ritual, and to be protected from discrimination, harassment and victimisation.

The rule 'everyone must state their pronouns', or even the practice of encouraging employees to do so, puts people who do not believe in gender-identity ideology at a disadvantage. Many people have told us that they feel under pressure to comply and are afraid of declining for fear of marking themselves out as 'gender-critical', and facing harassment and discrimination as a result.

People who consider themselves transgender but who have not taken steps to transition and are not 'out' (that is, they still present as their sex but feel like the opposite sex, or some other identity, inside) can also feel discomfort.

It is not practically necessary for people to 'state their pronouns' in order to facilitate polite and respectful interaction. Ordinarily, people take cues on each other's sex based on appearance, voice, name and title, and the pronouns used in ordinary speech and writing. This is an unconscious process, which takes place on first meeting someone. It is difficult to avoid using grammatically correct pronouns to talk about someone once you know what sex they are.

Stating your pronouns is a profession of belief

The request for everyone to 'state their pronouns' is not a practical request to help people figure out who to call 'he' and who to call 'she' but is something else. It is a profession of belief in gender identity, or at least of obedience to that belief system's rituals.

An opinion piece published by the trade union Prospect, 'Why we should all start using pronouns'², sets this out clearly:

Why do people add pronouns?

I'm cisgender, which means I identify with the sex assigned to me at birth. I use the pronouns she/her to help normalise discussions about gender, especially for the trans and non-binary communities.

What's the difference between sex and gender?

Put simply, sex is your physical body or your biology. Gender identity is who you are as a person – socially, emotionally and psychologically.

Who are the trans and non-binary community?

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

² <https://members.prospect.org.uk/news/id/2020/February/24/Why-we-should-all-start-using-pronouns>

Non-binary is a term for people whose gender identity doesn't sit comfortably with 'man' or 'woman'.

Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely.

Non-binary people use they/them to reflect where they are on the gender spectrum.

Using your pronouns in signatures and social media biographies tells everyone that you are not going to assume their gender.

It is an important move towards real inclusivity in the workplace and wider society. It creates a healthier, safe space so everyone can bring their 'whole self' to work and be respected for it.

A second benefit in using pronouns is that it helps avoid getting someone's gender wrong.

A final benefit is to support your trans and non-binary workmates and friends by reducing some of the burden on them to continuously explain their identity.

We must learn how to refer to people in whatever way they see themselves and choose to be seen.

A person can have any number of reasons for rejecting a call to 'state their pronouns'. These may be rooted in their religious belief, their philosophical belief, including feminist convictions, their sexual orientation, or simply discomfort at being required to participate in a ritual based on a belief they do not share. All of these are protected characteristics under the Equality Act.

As the Prospect article spells out, 'stating your pronouns' means participating in an observance based on the idea of gender identity. It is a statement that the words 'he' or 'she' do not refer to your sex but your innate internal gender identity. And similarly it suggests that when you refer to other people as 'he' or 'she' you are referring to their innate sense of gender identity and not, in general, to their sex as you perceive it.

According to this belief system, 'gender identity is who you are as a person – socially, emotionally and psychologically'. Thus by saying 'My pronouns are she/he', you are not simply saying 'I am female' (which people will already be able to tell by sight and sound), but 'I am socially, emotionally and psychologically feminine': a 'cisgendered woman' who identifies with the social status and norms accorded to women.

Many women (even if they are willing to use other people's preferred pronouns as a courtesy) object to identifying as 'cis' or complying with general pronoun rituals, as they see it as supporting a sexist idea which encourages people to see them as fundamentally different from their male colleagues, and defined by stereotypes of femininity.

Replacing sex with the idea of gender identity is also particularly problematic for many gay men and lesbians, since it destroys language needed to express their exclusive attraction to the same sex – not to the 'same gender identity'.

What should you do?

If your employer (or your school or university) asks or encourages you to state your pronouns:

The simplest thing is to decline in a low-key manner. You do not need to explain why. Simply refrain from putting pronouns in your biography or your email signature and don't announce them at meetings. If invited to, say 'No thank you' and if asked why, say something bland like 'It is not a practice I follow'.

Employers should recognise that not everyone has the same beliefs, and that cultural rituals should not be imposed on people with demands that they explain themselves if they decline. For example, a work team might toast a success with champagne. If one colleague declines to drink alcohol it might be because of their religion, because they are pregnant, because they are a recovering alcoholic, because they are on medication or for any number of personal reasons. A simple 'No thank you' should be accepted without question – similarly with an invitation to state your pronouns.

You do not have to go further than this. If you do feel moved to say something more strongly about your reasons you are likely to get into a discussion about your beliefs about gender identity, which can be dangerous territory in an organisation that views people with gender-critical beliefs as bigots who can be discriminated against and

harassed. Pick your moment and your approach. It may be best to write a short note to the relevant manager asking for clarification about policy.

Find out if it is a voluntary or mandatory practice

If you feel that the practice of stating your pronouns is not entirely voluntary but is becoming mandatory – for example if there is pressure from the top (or through ‘reverse mentoring’), encouragement through training and articles on the intranet, or social pressure on those who do not announce pronouns – you could raise this with your organisation. Highlight the protected belief and ask for confirmation that stating pronouns is purely a voluntary act by individuals, with no penalty, reward or judgment for either doing it or not doing it.

If your organisation agrees that it is voluntary and recognises that it is a matter of belief, it should be open to pairing its promotion of the views of people with that belief with promoting the views of those who do not share it, in order to encourage mutual understanding:

- If your organisation introduces the idea of pronoun announcements through training, you could ask that it also highlights the beliefs of those who do not believe in gender identity.
- If your organisation publishes an article in internal communications by someone promoting pronoun announcements, you could ask to write one explaining why some people do not participate and why their beliefs should be respected.
- If your organisation’s diversity and inclusion team circulates an article from an external organisation encouraging ‘stating pronouns’, you could suggest an article or resource from an organisation explaining why some people do not take part in pronoun announcements.

Participating in the ‘state your pronouns’ ritual should not be a condition of continued employment, and you should not face pervasive, severe, and persistent hostility for declining to participate, or be marked down in performance assessments for not doing so. If you do, you should consider bringing a grievance.

Can you be required to use other people's pronouns?

The question of when it is reasonable for an employer to require that you use non-sex-based pronouns for others is less straightforward.³

Like greeting shoppers with 'Have a nice day' or calling fellow teachers Mr So-and-so, it may be a reasonable expectation as part of your job or professional practice to refer to colleagues with the pronouns and title they prefer, even if it is not congruent with their sex, or at least to avoid using pronouns and other language which refers to their sex in general conversation if it makes them uncomfortable.

The judgment in the Forstater case stated clearly:

"This judgment does not mean that those with gender-critical beliefs can 'misgender' trans persons with impunity. The Claimant, like everyone else, will continue to be subject to the prohibitions on discrimination and harassment that apply to everyone else. **Whether or not conduct in a given situation does amount to harassment or discrimination within the meaning of the Equality Act 2010 will be for a tribunal to determine in a given case.**"⁴

Avoiding creating a hostile environment for a transgender person at work or as a customer or student is clearly a legitimate aim for a policy.

However, so too are other objectives such as keeping them and others safe, and enabling people to give evidence and report news accurately. As a doctor, teacher, therapist, safeguarding professional, social worker, HR manager, judge or journalist, and in many other roles, it can be necessary to acknowledge the sex of the people with whom you interact in some situations for their own safety or the safety and dignity of others, or for some other reason in their interest, the public interest or for the sound management of the organisation.

Not unlawfully constraining the freedom of belief of gender-critical people who use pronouns to refer to sex, not gender identity, is also a consideration.

³ See for example <https://legalfeminist.org.uk/2021/07/27/misgendering-and-harassment/> for consideration of some different scenarios.

⁴ https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya_Forstater_v_CGD_Europe_and_others_UKEAT0105_20_JOJ.pdf

Calling someone 'he' or 'sir' repeatedly to their face when they wish to be called 'she' or 'madam' in a situation where there is no good reason to do so is likely to be harassment, as it creates a hostile situation, and policies to avoid this are likely to be justified.⁵

However, an organisation should consider whether a rule or policy requiring preferred pronoun use causes a detriment to people with gender-critical views, and if so whether that detriment can be justified or mitigated. Some colleagues may be happy to use non-sex based pronouns; others may not want to, or find it extremely difficult. A less discriminatory approach might be for a person to agree to use a person's name and endeavour to avoid pronouns altogether when talking about them in their presence in the third person.

On the other side, there is a question of whether a rule or policy requiring the clear acknowledgment or recording of a person's sex causes a detriment to transsexual people and to those transitioning (as defined by Section 7 of the Equality Act), and whether this can be justified or mitigated. For example, there are good reasons why a doctor's surgery should record people's sex accurately, and be clear about it in referring to them in conversations with other healthcare professionals in situations where their sex matters. This might not mean pronouns, but other clear words such as 'male' and 'female' which are also sometimes labelled as misgendering.

There is no case law from the UK yet on the question of pronouns (the case of Dr Mackereth, a doctor working for the Department for Work and Pensions who refused to use preferred pronouns, is coming up for appeal in October 2021). But no case will settle the matter in all other situations, either in favour of making preferred pronouns always compulsory, or always voluntary. The issue will continue to depend on the facts, and on whether the rule or policy is justified in a specific situation.

⁵ For example, see page 114 of the EHRC Services, public functions and associations Statutory Code of Practice: https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf

A US Case: pronouns at university

In a case from the US, a philosophy professor, Nicholas Meriweather, was disciplined by his employer, Shawnee State University, after he responded to a male student's question by saying, "Yes, sir". After the class, the student approached Meriwether, stated that he was transgender, and demanded that the professor refer to him with female titles and pronouns. When Meriweather did not agree, the student filed a complaint with the university, which launched a formal investigation. Meriwether offered to call the student by first or last name, but the student insisted that Meriwether use pronouns and titles. University officials ultimately rejected any compromise and placed a written warning in Meriwether's personnel file. The case found against the university, explaining that if "professors lacked free-speech protections when teaching, a university would wield alarming power to compel ideological conformity".⁶

Finding a workable solution

Employers should make clear what their policy is and why it is justified, and express it in a way that reflects diversity of belief. A workplace policy should not be akin to a religious tract reflecting just one belief system. Rather it should reflect that most people use the terms 'he' and 'she' to refer to a person's sex, while some use the terms 'he', 'she' and 'they', as well as 'zie', 'per' and so on, to refer to the idea of innate gender identity.

Gender-critical people (who use 'he' and 'she' to refer to sex) may, out of politeness and consideration, be willing to avoid pronouns or use preferred pronouns, as long as that is

⁶ See for example <https://www.opn.ca6.uscourts.gov/opinions.pdf/21a0071p-06.pdf>

not taken as a statement of belief in innate gender identity, or that a person has changed sex.

If, as an employee, your conscience (or disability or other reason) does not allow you to refer to a person using opposite-sex terms in any situation, you could consider and discuss how this constraint interacts with the requirements of your job, and with your employer's policy. It may be possible to find a compromise to avoid hostility (for example by avoiding sexed terms altogether).

Pronouns are difficult to avoid in many situations. Employers should recognise that using a person's preferred pronouns out of courtesy does not constitute consent to share changing, washing, toilet or sleeping accommodation with a member of the opposite sex. These are all separate questions with different justifications.

If employers provide clear single-sex and unisex options for changing, washing and toilets this avoids forcing people to share 'single-sex spaces' with members of the opposite sex based on gender identity, or forcing those who identify as transgender to use single-sex spaces which make them uncomfortable.

Such practical solutions, which reflect sex and respect everybody's privacy, reduce tension and the likelihood of hostile interactions over pronouns.

What if pronoun use conflicts with other objectives?

Although using someone's preferred pronouns can be polite, it can also be a safeguarding issue.

Many schools have adopted guidance from lobby groups which tells them that if a child identifies as transgender they should change their name and pronouns without telling parents if the child requests it. Teachers may be told they should refer to a child as 'he' in class but as 'she' when talking to parents.

Sex Matters advises that schools should not adopt this approach.⁷ Keeping secrets with children is a safeguarding risk, and schools should work with families.

⁷ Sex Matters (2021) *Boys and Girls and the Equality Act – guidance for schools (England and Wales)*: <https://sex-matters.org/posts/publications/schools-guidance-2/>

Social transitioning is a serious step. Schools should not agree to use a name or pronoun for a child that they keep secret from parents. Any concerns about a child (including their psychological state, or who they are talking to online) should be discussed with their parents, in line with normal pastoral and safeguarding practices. Neglecting to protect a child with the normal standard of safeguarding because the child identifies as trans is discrimination on grounds of gender reassignment.

“My friend is a teacher at a school. She received an email last week informing her that a female student would like to be referred by a male name and pronouns. The email explicitly stated that the child’s parents have not been informed and that if the school does speak to the parents they should revert to using the legal name and pronouns. My friend has spoken with other staff members and also questioned the safeguarding issues but has been informed that the safeguarding officer is aware of the situation and is happy not to inform the parents.”

This is a situation where a school’s whistleblowing policy should come into play. Whistleblowing policies are usually published on the school’s website. They encourage staff to voice serious concerns and to report serious incidents, providing assurance that any report will be treated as a ‘protected, internal disclosure’ – there will be no adverse repercussions for the member of staff. Raising the issue is no guarantee that it will be taken seriously, but it is worth doing, in writing, referring to safeguarding issues.

If you raise, escalate or act on a safeguarding concern following the whistleblowing policy you should be protected from detriment or dismissal for having done so.

‘Misgendering’: beyond pronouns

The definition of ‘misgendering’ promoted by gender-ideology organisations is much wider than pronouns. Warwick University’s website includes a page setting out an expansive definition of ‘misgendering’⁸ that effectively precludes using any sex-based language whatsoever about transgender individuals, or wider population groups.

⁸ https://warwick.ac.uk/fac/cross_fac/academy/activities/learningcircles/transqueerpedagogies/queeringuniversity/resources/misgendering/

What does it mean to misgender someone?

A person 'misgenders' another when they interact with them in some way which does not respect their gender identity.

Examples of misgendering include:

- Using the wrong pronouns for someone, such as referring to a trans woman with 'he', 'him', and 'his' pronouns.
- Using gendered language to refer to someone which doesn't align with their gender identity, such as referring to a trans man as a woman, a 'sister' or a 'wife' (or any other female gendered noun).
- Using gendered language to refer to a group of people which doesn't align with one or more of the group's gender identity, such as referring to a group as 'ladies' when a man or non-binary person is in the group
- Indicating that you do not believe that someone is the gender they say they are.
- Assigning them to a gendered category which does not align with their gender identity, such as marking a non-binary person as male or female on a form, or dividing a group according to gender identity and assigning someone to a group that doesn't match their gender identity.
- Not affording someone the same opportunities as others who share their gender identity, such as not advertising a women-only programme to trans women.

Such a policy is not likely to be in line with the Equality Act 2010, as these extreme constraints on language and on freedom of speech and association (that is, the existence of women-only groups and programmes) are not justified.

If your employer or organisation has a policy like this on their website or intranet, it is worth asking if this is an official policy, and if it is not, for the employer to put a disclaimer on the page.

If it is an official policy, the employer should consider how it interacts with an employer's obligation to avoid belief discrimination and sex discrimination, and to allow freedom of association (including of single-sex groups). If the employer is a public authority, it should subject the policy to an equality impact assessment.

Official policies should not be written in the language of gender-identity believers, but should recognise that different people have different beliefs about gender and sex, and aim to help different groups to understand the diversity of beliefs and the objective justification for common standards of behaviour that enable tolerance and equality in the workplace.

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