THE LEADERS' GUIDE

Pronoun Usage

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Business Forum

Pronouns in the Workplace and Equality Law: A Briefing for Business Leaders

Executive Summary

UK law does not contain a general prohibition on "misgendering".

Nor does it contain a blanket right to refer to other people by their biological sex.

Rather, it is much more nuanced and context specific.

UK Equality Act recognises gender reassignment as a protected characteristic.

UK law also recognises that biological sex is a protected characteristic and gender criticism a protected belief.

This means

1. repeated or objectively inappropriate use of pronouns other than "preferred pronouns", may, in specific circumstances, amount to unlawful harassment or discrimination under the **Equality Act 2010**.
2. However ,there are many situations where referencing a person's biological sex or utilising biologically accurate language is lawful, necessary, or contractually required.

Business leaders must avoid simplistic, blanket pronoun mandates or knee-jerk disciplinary policies. Instead, risk management must focus on context, proportionality, and the careful balancing of competing protected characteristics.

This guide aims to provide some clarity in this complex issue.

The issues

The workplace has become a primary arena for competing views on sex and gender identity. Many employers, influenced by diversity initiatives, have introduced policies that strongly encourage or mandate the declaration of preferred pronouns (for example, in email signatures) and have classified "misgendering" as automatic gross misconduct.

Conversely, a significant proportion of the workforce, have gender-critical beliefs in that they believe biological sex is real, immutable, and distinct from gender identity. They may well resist being compelled to declare personal pronouns or use pronouns that do not align with biological sex.

This tension presents complex legal risks for employers trying to navigate statutory duties.

Protected Characteristics and The Balancing Act

The **Equality Act 2010** does not create a hierarchy of rights. Employers owe equal duties to individuals possessing different, and sometimes competing, protected characteristics:

- **Sex:** Biological sex is a protected characteristic.
- **Gender Reassignment:** Protects individuals who are proposing to undergo, are undergoing, or have undergone a process to reassign their sex. There is no legal requirement for medical intervention.
- **Religion or Belief:** Protects philosophical beliefs.

Relevant Caselaw: The Legal Baseline

The Supreme Court ruling in ***Lee v Ashers Baking Company Ltd [2018]*** established that the law cannot compel someone to express a political or philosophical opinion with which they deeply disagree. In the workplace, this precedent suggests that mandating employees to state preferred pronouns, such as requiring their inclusion in email signatures, without strong justification, would constitute a form of compelled speech that could unlawfully infringe upon an individual's right to freedom of thought, conscience, and religion under Article 9 and 10 of the ECHR.

The landmark Employment Appeal Tribunal ruling in ***Forstater v CGD Europe [2021]*** established that gender-critical beliefs are protected as philosophical beliefs under Section 10 of the Equality Act. When considering manifestations of belief such as refusal to use preferred pronouns, it also determined that "a blanket restriction on a person not to express those views irrespective of those circumstances" should not be made.

Subsequent cases, such as ***Mackereth v Department for Work and Pensions [2022] and Higgs v Farmor's School [2023]***, have refined how this operates in practice. While a gender-critical belief is protected absolutely, the manifestation of that belief, such as refusing to use a colleague's preferred pronouns, can be restricted by an employer if the restriction is proportionate and pursues a legitimate aim, such as protecting others from harassment. This is particularly in the case where there is an imbalance of power or where there is a duty of care with vulnerable people.

Higgs established that employers cannot automatically discipline an employee for expressing their beliefs. Any disciplinary action must be a proportionate response after balancing the employee's freedom

of expression against the potential disruption or harm caused. In **Mackereth** the employer did consider how they could accommodate his belief but could not find a way to do so.

In the first instance case of **Orwin v East Riding of Yorkshire**, a staff member when faced with an encouragement to put pronouns in their email footer, protested by modifying his own internal email footer to state: **"XYchromosomeGuy/AdultHumanMale"** instead of standard pronouns. His dismissal was held not to be discriminatory because his conduct was held to be an act of protest rather than a direct manifestation of his belief.

Misgendering and Harassment

The Equality Act 2010 does not define "misgendering". Instead, allegations usually fall under **Section 26 (Harassment)**, which occurs when a person engages in unwanted conduct related to a protected characteristic that has the purpose or effect of violating an individual's dignity, or creating an intimidating, hostile, degrading, humiliating, or offensive environment.

Under **Section 26(4)**, when determining if conduct has this effect, Tribunals must evaluate the subjective perception of the complainant, the other circumstances of the case, and **whether it is reasonable for the conduct to have that effect.**

An accidental slip, a single mistake, or a polite refusal to use neopronouns like "ze" or "zir" is highly unlikely to meet the high objective threshold required for unlawful harassment. However, deliberate, persistent, targeted, or hostile refusal to use a colleague's preferred pronouns, especially after being asked to stop, may well be deemed unreasonable and amount to harassment related to gender reassignment.

The Complication of Neurodiversity and Capability

Employers must also ensure that strict pronoun policies do not inadvertently discriminate against disabled or neurodivergent employees. In ***Sylvester v Stuart Phillipson and Others [2024]***, a dyspraxic university employee was disciplined under an internal policy after she accidentally misgendered a trans colleague due to a short-term memory slip.

The Employment Tribunal found that the university's rigid policy, which dictated that persistently using the incorrect pronoun automatically constituted harassment, was both discriminatory under Section 15 (discrimination arising from disability) and Section 19 (indirect discrimination). The Tribunal noted that individuals with dyspraxia, autism spectrum conditions, or cognitive difficulties may struggle with literal compliance regarding rapidly changing pronouns, and a failure to accommodate these cognitive differences constitutes a significant legal liability for the employer.

Material Contexts Where Reference to Biological Sex is likely to be Reasonable

There are critical workplace scenarios where referencing biological sex is entirely reasonable and necessary, meaning that using sex-based language or "misgendering" from a gender-identity perspective is legally defensible.

Issues where Sex Is Material and Reference to Biological Sex May Occur

Situations where reference to sex is reasonable might include:

1. Determining and recruiting to a role requiring an occupational requirements for a specific sex.
2. Administrative and Regulatory Compliance -Employers frequently have legitimate obligations to record an employee's biological or legal sex for statutory bodies, such as gender pay gap reporting, pension providers, or group insurance policies, irrespective of their social transition. Pointing out biological sex in these technical, back-office scenarios is a material operational requirement and does not constitute harassment.
3. Planning and administering single-sex services and spaces where permitted by the Equality Act or other law. For example, under the Workplace (Health Safety and Welfare) Regulations employers are required to designate, communal toilets and changing rooms, as single-sex to protect privacy, safety, and dignity.
4. Grievances - If a female employee raises a formal grievance regarding a trans woman (a biological male) utilising a female changing room, the employer and the complainant must be able to discuss the matter using precise biological terms. In this context, referencing the trans woman's biological sex or using sex-accurate language within the grievance process is material to the legal dispute. It would be entirely unreasonable for an employer to discipline the complaining employee for misgendering, as the biological sex of the individual is the very core of the statutory exception being debated.

Is Displaying/Disseminating Any "Pro-Trans" Material itself Unlawful to Gender Critical staff?

Recent decisions in ***Newman v Metropolitan Police [2025]*** and ***Jennings v Department for Work and Pensions [2026]*** demonstrate that an employer's baseline provision, display, or permission of pro-trans materials and imagery does not cross the statutory threshold for discrimination or harassment against gender-critical or religious employees. In ***Newman***, a gender-critical police officer failed in her harassment claim regarding a voluntary, internal Trans Day of Visibility event featuring highly critical views of gender-critical ideology. The Tribunal emphasised that because attendance was entirely optional and aimed broadly at promoting inclusivity within a vast workforce, a voluntary event could not objectively be viewed as creating a hostile, degrading, or intimidating environment for an employee who simply chose to listen in. This is being appealed.

Similarly, in ***Jennings***, the Tribunal dismissed claims of indirect discrimination and failure to make reasonable adjustments brought by an evangelical Christian applicant who demanded the removal of all Pride symbols and pronoun identifiers from a jobcentre. The Tribunal ruled that an employer cannot be forced to sterilise the workplace of LGBTQ+ visibility to accommodate an individual's beliefs, noting that censoring such displays might actively expose the employer to discrimination and harassment claims from other staff members.

Areas Where the Law is Not Fully Settled

Business leaders should be aware that employment law in this arena remains fluid, with several grey areas yet to be definitively resolved by higher appellate courts:

- **Compelled Speech:** The extent to which an employer can legally force a gender-critical employee to an active statement or use of preferred pronouns, such as mandating pronouns in email signatures, remains technically untested. It is highly arguable that forcing an employee to manifest a belief they do not hold, violates their rights.
- **The Boundary of Passive Avoidance:** The exact boundary where a gender-critical employee's passive avoidance of pronoun use, such as always using a colleague's name instead of a pronoun, crosses from a legally protected manifestation into actionable harassment has not been strictly defined. Tribunals evaluate this strictly on a case-by-case basis.

Practical Guidance

To mitigate litigation risk from both sides of the gender debate, employers should adopt a legally robust, balanced approach:

- **Ditch Blanket Gross Misconduct Rules:** Avoid policies stating that any instance of misgendering automatically equals gross misconduct. As highlighted by Sylvester, this ignores the statutory requirement for reasonableness, fails to accommodate neurodiversity, and invites claims for unfair dismissal or discrimination.
- **Avoid Pronoun Mandates:** Do not make the inclusion of pronouns in email signatures or introductions mandatory. Make it strictly voluntary or have no policy on it. Forcing gender-critical employees to participate constitutes compelled speech. It disadvantages women who choose to omit pronouns as in industries where their female sex attracts a prejudicial response; while forcing closeted trans individuals to declare pronouns could also amount to unlawful discrimination and/or harassment.
- **Distinguish Debate from Harassment:** Ensure code-of-conduct policies differentiate between the respectful expression of differing views on sex or gender, which is legally protected, and targeted, hostile conduct directed at a specific colleague, which can be disciplined.
- **Promote the Neutral Workaround:** Where an employee has a genuine philosophical objection to using preferred pronouns that conflict with biological sex, encourage them to use the colleague's preferred name instead. This respects the objector's beliefs while ensuring the trans colleague is not subjected to what they consider hostile or jarring language.
- **Protect the Integrity of Grievance Processes:** Ensure that staff are never penalised for using accurate biological terminology when raising or participating in legitimate workplace conversations or disputes regarding single sex services, privacy, safeguarding, or single-sex facilities.

Bottom Line

UK employment law requires business leaders to balance competing rights neutrally rather than giving automatic primacy to one protected characteristic over another. Whether pronoun usage or misgendering crosses the line into unlawfulness depends entirely on context, frequency, intent, neurodivergent capability, and objective reasonableness.

This briefing is a general information sheet and does not constitute formal legal advice. For live disputes or policy overhauls, employers should secure specialist employment law counsel.

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