THE LEADERS' GUIDE

LGB and Gender Reassignment

Why Distinguishing Between Protected Characteristics Matters for Senior Leaders.

LGB ALLIANCE
Business Forum

A practical guide to improving decision-making, understanding employee experiences and meeting legal obligations with confidence.

Introduction

Organisations increasingly seek to support diverse workforces while navigating a complex legal and social landscape.

Sexual orientation and gender reassignment are separate protected characteristics under the Equality Act 2010. Yet they are often discussed, measured and addressed as though they were interchangeable.

This guide explores why distinguishing between these characteristics matters for senior leaders. It explains how a more precise approach can improve decision-making, help organisations understand employee experiences more clearly, and support fair and lawful responses to workplace issues.

With this document, the LGB Alliance Business Forum aims to give leaders accurate information so they can understand different employee experiences and respond appropriately.

This guide provides a practical overview and does not constitute legal advice; organisations should seek specialist advice where required. Understanding the law and avoiding common mistakes is however essential for reducing friction in the workplace and minimising employee resentment.

COMMON MISUNDERSTANDINGS

- **Assuming all LGBTQ+ identities have identical legal status.**
- **Assuming self-identification automatically creates Equality Act protection.**
- **Assuming that "queer", "non-binary", or "intersex" are themselves protected characteristics.**
- **Assuming a person can only have one protected characteristic.**
- **Assuming everyone within the "LGBTQ+" umbrella has the same legal rights, experiences or priorities.**
- **Assuming that medical treatment or a Gender Recognition Certificate is required for protection under the protected category of "gender reassignment".**

Understanding Identity Labels and Protected Characteristics

Many leaders assume that "LGBTQ+" is itself a legal category. It is not. The Equality Act 2010 protects specific characteristics, including:

- sexual orientation - lesbian, gay or bisexual; and
- gender reassignment.

Within this acronym these are some protected characteristics with separate legal definitions and other identities which are not recognised in the Equality Act 2010.

Identity labels and protected characteristics are therefore not always the same thing.

For example, a person may describe themselves as:

- queer;
- non-binary;
- gender-fluid;
- pansexual; or
- transgender.

Some of these terms may indicate that a protected characteristic is engaged. Others may not. Much depends on the evidence including what the individual means by the term.

The term "transgender" itself is now used in a variety of ways. Some people use it to describe a process of gender reassignment. Others use it as a broader identity label and may have no intention of transitioning or living as the opposite sex.

For this reason, employers should avoid assumptions and seek to understand how the individual uses any term.

QUICK REFERENCE GUIDE

If the identity describes...	Consider...	Examples	Indicative position
Who the person is sexually/ romantically attracted to	**Sexual Orientation**	Lesbian, Gay, Bisexual	Usually protected. The legal position regarding asexuality remains uncertain.
A process of transition or living as the opposite sex	**Gender Reassignment**	Trans woman, Trans man, Non-binary.	Usually protected where the statutory test for gender reassignment is met. Particular care should be taken as these terms may be used differently by different individuals.
Something other than attraction or transition	**Whether another protected characteristic may apply**	Intersex / Differences of Sex Development (DSD), Queer, Cross-dressing	No automatic protection arises from these identity labels themselves. Protection may arise under another protected characteristic depending on the circumstances and the individual's own description.

Where there is uncertainty, organisations should seek legal advice rather than make assumptions.

Legal protection and workplace policy are not the same thing

Organisations often adopt workplace policies that extend beyond the minimum requirements of the Equality Act. For example, an employer may choose to:

- permit employees to use preferred names;
- collect information on additional identities for internal purposes; or
- provide additional forms of workplace support.

However, employers should be careful not to assume that every identity label has independent legal status.

Importantly, workplace policies must still comply with the Equality Act and should not inadvertently undermine the rights of other people who possess protected characteristics.

For example, policies introduced to accommodate one group may, depending on their design and implementation, affect the rights of others, including rights relating to:

- sex;
- sexual orientation;
- religion or belief;
- privacy and dignity; or
- freedom of expression.

This means that leaders should be cautious about creating policies based solely on identity labels without first considering:

1. whether a protected characteristic is engaged;
2. whether competing rights may arise; and
3. how those rights can be balanced fairly and lawfully.

An organisation can choose to recognise particular identities in its internal policies but doing so does not create a new protected characteristic or change the legal definitions in the Equality Act 2010. If those policies conflict with equality or human rights law, the organisation could face legal challenge.

A policy that goes beyond the requirements of the law is not necessarily unlawful, but could create risk.

However, employers should avoid assuming that extending recognition to additional identities is legally neutral and without risk. Policies should always be assessed for their potential impact on the rights of others.

This leaflet is intended to help managers, HR professionals and senior leaders determine whether an individual's stated identity engages a protected characteristic under the Equality Act 2010.

The Equality Act protects specific characteristics. It does not create a protected characteristic called "LGBTQ+" and not every identity label has independent legal status.

LGB = Sexual Orientation

Gender Reassignment = Separate characteristic under which some but not all trans identifying people will fall

QIA+ = may or may not engage a protected characteristic

Key points

- Sexual orientation and gender reassignment are separate protected characteristics under the Equality Act 2010.
- Mixing information from different protected characteristics or data categories is legally risky.
- Broad categories can build community and solidarity, but they may also obscure important differences in experiences and outcomes between groups. Organisations should be clear about the purpose of any broad category and ensure employees understand that it does not alter legal rights or replace the protected characteristics recognised under the Equality Act 2010.
- Better information supports better decision-making. Distinguishing between protected characteristics can help organisations identify unmet needs and emerging issues, and understand whether staff networks, engagement activities and inclusion programmes are benefiting all the employees they are intended to support.
- Recognising differences between groups does not diminish anyone's rights or protections, including those of employees protected under the characteristic of gender reassignment.
- Inclusion categorically does not mean treating every employee or every experience as identical. Different groups can face different challenges, and understanding those differences helps organisations ensure that policies and support are fair, proportionate and effective for everyone.
- Senior leaders have a responsibility to ensure that policies, initiatives and resource allocation are informed by evidence rather than assumptions.
- Understanding different experiences more clearly enables organisations to respond fairly, effectively and with greater confidence.

Questions every senior leadership team should ask

- What evidence do we have about the experiences of different groups of employees?
- Which protected characteristics do we currently analyse separately? Why do we do so – and do we now separate characteristics that we used to group together (e.g. BAME)
- Where are the gaps in our understanding?
- How do we know whether our inclusion strategies are working? Are we sure we are monitoring the right metrics?
- Could our current approach be obscuring important differences in experience or outcomes?
- What changes would help us make more informed, evidence-based decisions?

What do we mean by "distinguishing between protected characteristics"?

The Equality Act 2010 protects people from discrimination on the basis of a number of characteristics, including sexual orientation and gender reassignment.

Distinguishing between protected characteristics means recognising that these characteristics are separate in law and may give rise to different experiences, needs and considerations in the workplace.

A common mistake is to treat "LGBTQ+" as though it were a single, homogeneous group. In reality, it brings together people with different protected characteristics, different experiences and, in some cases, different legal rights and interests.

It may also mean collecting and reviewing information in a way that allows organisations to understand whether different groups of employees are experiencing the workplace differently.

Why does this matter to senior leaders?

"Good intentions are not enough. Leaders need evidence. If different groups are bundled together, it becomes much harder to understand who is thriving, who is struggling, where action is needed, and whether you have eyes on the risks."

Simon White, Co-Chair, LGB Alliance Business Forum

Senior leaders are expected to make decisions that are fair, evidence-based and legally compliant.

Those decisions may relate to employee engagement, wellbeing initiatives, travel policies, staff networks, inclusion strategies, training programmes or the allocation of resources.

This has practical implications across the organisation. A gay employee asked to travel to a country where homosexuality is illegal could face risks that other colleagues do not. An employee network might appear healthy overall while one group quietly stops participating because it no longer reflects their experiences. A wellbeing survey might report high satisfaction overall while masking concerns affecting only one protected characteristic. Distinguishing between protected characteristics helps leaders identify these issues early and respond appropriately.

Broad categories can be useful in building community and solidarity. They may, however, provide only limited insight into whether particular groups of employees are thriving, facing barriers, requiring additional support, or *"quiet quitting"*.

The more precise the information available to leaders, the more confident they can be that decisions are responding to genuine needs rather than assumptions.

Why not simply treat everyone as one group?

"It's often said that we are stronger together. When people have very different characteristics, however, forcing them together makes it much more difficult for each group to define itself, speak for itself, and defend its own rights."

Kate Barker, CEO, LGB Alliance

Many organisations have employee networks and initiatives that bring together lesbian, gay, bisexual, trans and other employees under a shared banner.

These arrangements may offer valuable opportunities for peer support, networking and collective action.

At the same time, coalition working does not require organisations to assume that all groups have identical experiences or needs. For example, the protected characteristics of "female" and "pregnancy" are separate because, while only women experience pregnancy, not all women can or do become pregnant.

Distinguishing between protected characteristics allows organisations to recognise both shared interests and important differences.

Separate analysis and shared communities can coexist.

How did these characteristics come to be grouped together?

The terms "LGB" and "LGBTQIA+" are often used interchangeably in workplace and public discourse, leading some leaders to assume that sexual orientation and gender reassignment have always been understood as a single category.

The reality is more complex. The contemporary LGBTQIA+ umbrella developed over time through a combination of coalition-building, shared activism and strategic alignment between groups with different characteristics and priorities. Supporters argue that this has strengthened collective advocacy. Critics argue that many LGB people never consented to expanding their category, and that it obscures important differences in experiences and needs.

Whatever view leaders take of this history, the legal position is clear - sexual orientation and gender reassignment are separate protected characteristics under the Equality Act 2010. If this separation is not reflected in staff networks or groups, then organisations risk having an imperfect understanding of, and therefore potential discrimination towards both groups.

For example, if LGB employees disagree with the LGBTQ+ staff network, the larger 'parent' group may be favoured by HR and other business leaders, and the legitimate grievances of the LGB ignored.

Understanding that distinction can help organisations make more informed decisions and respond more effectively to different employee experiences.

A familiar principle

The principle of distinguishing between groups to better understand their experiences is not unique to discussions about sexual orientation and gender reassignment.

In recent years, the UK Government moved away from routinely using the term "BAME" because broad categories were found to obscure important differences between groups.

As the Government Equalities Office explained:

"'BAME' is frequently used to group all ethnic minorities together. This can disguise huge differences in outcomes between ethnic groups."

The same principle can be applied here. Sexual orientation and gender reassignment are separate protected characteristics under the Equality Act 2010. Looking at them separately can help organisations understand whether different groups of employees are having different experiences, identify unmet needs,and make more informed decisions about where support and resources are most needed.

Distinguishing between protected characteristics helps to ensure that differences are not overlooked in the pursuit of inclusion. Organisations should also be mindful that the Equality Act does not cover a range of identities and "neo-sexualities" that claim membership of the LGBTQ+ (often as part of the undefined "+").

What could organisations miss if they do not distinguish?

When different groups are considered only as part of a larger category, organisations may find it harder to identify whether specific issues are affecting particular employees.

Questions that may be difficult to answer include:

- Are lesbian employees reporting different experiences from gay men or bisexual employees? For example, are reports of homophobic language or behaviour disproportionately affecting lesbian employees?
- Are particular groups less likely to participate in staff networks or development opportunities? Similarly, are groups quietly becoming less diverse as employees decline to participate because they do not feel represented; for example, lesbians joining women's networks because LGBTQ+ groups are male-dominated?
- Is the equality monitoring and reporting showing us patterns which might be evidence of unlawful discrimination in any of the discrete protected characteristics?

- Are existing initiatives meeting the needs of all employees they are intended to support?
- Are there concerns being raised by one group that are not visible within broader reporting?

Consider an organisation that runs an annual employee engagement survey and finds that "LGBTQ+ employees" report high levels of satisfaction and belonging. On the surface, this appears to be a success. However, without looking at different groups separately, leaders cannot know whether that positive result is shared across all groups or whether concerns raised by one group are being masked by stronger responses from another.

Similarly, an employee network may appear healthy because membership numbers are growing. Yet participation data alone cannot reveal who is and is not taking part. For example, if lesbian employees increasingly choose to engage through women's networks rather than LGBTQ+ networks because they do not feel represented, an organisation may conclude that its LGBTQ+ network is flourishing while missing a shift in where some employees feel most comfortable contributing and being heard - and, just as importantly, why.

Without this level of understanding, organisations may struggle to assess whether their efforts are reaching the people they are designed to benefit.

In legal terms, an employer who does not monitor patterns of possible unlawful discrimination by the use of correctly worded equality monitoring forms may be unable to succeed in the employers' defence in s109(4) Equality Act; that is to avoid vicarious liability evidence for any unlawful discrimination by their employee by showing they took all reasonable steps to avoid it.

Or put in more simple terms:

Monitoring employee experiences helps leaders identify potential problems before they become legal problems. Without good information, organisations may find it more difficult to demonstrate that they have taken reasonable steps to prevent discrimination, capability, and objective reasonableness.

Data Protection Act and GDPR

This advice is in accordance with data protection and GDPR principles

The best way to ensure data quality, avoid confusion, conflict and upset, and reduce the risk of liability, is to be clear about what information is needed, and why. Standard data-protection principles require you to ensure that information is:

- used fairly, lawfully and transparently
- used for specified, explicit purposes
- used in a way that is adequate, relevant and limited to what is necessary
- accurate and, where necessary, kept up to date
- kept for no longer than is necessary
- handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage.

Testing Your Assumptions - Questions for Leaders

- What information do we currently collect about employee experience?
- Which protected characteristics are reported separately?
- How are our equality monitoring forms worded? Do they aggregate out each protected characteristic?

- What assumptions underpin our inclusion strategies?
- How do we know whether our initiatives are effective?
- Are there groups whose experiences may be obscured by broad reporting categories?
- What additional evidence would help us make better decisions?

Does distinguishing between characteristics reduce support for employees protected under the characteristic of gender reassignment?

No.

Recognising that sexual orientation and gender reassignment are distinct protected characteristics does not require organisations to reduce their commitment to any group of employees.

The Equality Act 2010 provides protection against unlawful discrimination for people who are protected under the characteristic of gender reassignment. Broadly speaking, this applies to people who are proposing to undergo, are undergoing, or have undergone a process to reassign their sex by changing physiological or other attributes of sex.

Recognising distinct characteristics does not diminish those protections. It enables organisations to understand and respond to different experiences more effectively.

Different groups can face different challenges. Recognising those differences is often the first step towards addressing them effectively.

What should leaders do next?

- Review how your organisation currently collects and reports employee data.
- Consider whether sexual orientation and gender reassignment are analysed separately where appropriate.
- Examine whether broad reporting categories may be masking important differences in employee experience.
- Ask how your organisation evaluates the effectiveness of its inclusion initiatives.
- Ensure employee engagement mechanisms enable different groups to articulate their own experiences and needs. This may include surveys, focus groups, listening exercises or employee networks. Leaders should be cautious about assuming that any single group or forum reflects the experiences of all employees.
- Encourage HR and leadership teams to test assumptions against available evidence.
- Review materials (e.g. marketing, workplace policies, reports) that pre-date the expansion or merger of different characteristics, and test whether statements and evidence still apply.
- Review staff networks and governance arrangements to ensure that both shared interests and distinct perspectives can be heard.
- Seek specialist legal advice when developing policies or responding to complex issues involving protected characteristics.

- Equip managers with the confidence and knowledge to navigate these issues fairly and consistently. ✓
- Keep organisational approaches under review and be willing to adapt them as new evidence emerges. ✓
- Focus on outcomes - ask whether current approaches are improving employee experience for all groups they are intended to support. ✓
- Foster a culture of curiosity and respectful inquiry, where leaders are prepared to ask difficult questions in pursuit of fair and effective decision-making. ✓

Two questions to take away

If we cannot distinguish between the experiences of different groups, how can we be confident that we understand their needs well enough to respond effectively?

Are we measuring our diversity and inclusion initiatives against wider corporate goals, and to the same rigorous standards?

Better decisions begin with better information.

1. Sign up for our Business Forum Corporate Supporter Programme to get early access to resources, invitations to briefings and events, and regular updates on emerging workplace issues.
2. Join our Business Forum Advisory Network, bringing together HR leaders, employment lawyers, employee relations specialists, senior executives and other experts to help shape future guidance, research and practical resources.

For more detailed information on either of these opportunities please contact **Rebecca.Cobb@lgballiance.org.uk**

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