

ICO Trans policy and guidance

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Key messages

The main objective of this policy is to:

- Provide support and guidance for individuals who wish to, have taken, or are intending to take steps to present themselves as a gender different to that registered at birth and those who identify as gender non-conforming (non-binary).
- Provide guidance for People Managers supporting colleagues who are transitioning or have transitioned.
- Provide guidance for staff handling cases containing protected information.

The ICO is committed to inclusivity and equity for trans and gender non-conforming people and to creating a culture in which employees, customers and stakeholders are treated with dignity and respect in which

they do not experience any kind of discrimination, harassment or bullying because of their gender or gender expression.

This policy and guidance sets out the framework and process to enable this to happen in a flexible and supportive way.

Does this policy relate to me?

This policy and guidance applies to all ICO staff, its stakeholders, and customers.

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1. Definitions

1.1 The language around gender identity, presentation and transition is a constantly changing landscape. These are the key terms that we refer to throughout this policy.

- Trans – an umbrella term for those whose gender identity or expression differs in some way from the sex they were registered as at birth.
- Sex and gender – There is a difference between sex and gender. Sex refers to the physical characteristics of a person, such as male, female, and intersex. Gender is a separate concept that refers to an individual's personal gender identity which includes social, psychological, and behavioural aspects of being a man, woman, or other gender identity.
- Gender reassignment – The Equality Act 2010 defines in law the protected characteristic of 'gender reassignment' as someone who is 'proposing to undergo, are undergoing, or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.
- Transitioning is the term used to describe the process someone goes through to change from one gender to another with or without medical intervention. Every trans person's journey is unique and individual and not everyone who identifies as trans chooses to medically transition.
- Pronouns – Gender pronouns such as he/she/they/ze, is the pronoun that a person chooses to use for themselves to describe their gender.

- Non-Binary and genderqueer are the umbrella terms for gender identities that are not solely male or female.
- Cisgender (Cis) – A cisgender person has a gender identity that matches their sex assigned at birth.
- Gender non-conforming people are those who do not identify with a permanent binary gender identity, including those who identify in other ways, eg non-binary, gender queer or gender fluid. This is not an exhaustive list and the term for gender identity is a personal one and will change from individual to individual.
- Gender Recognition Certificate is the document issued when a person has met the legal criteria under the Gender Recognition Act 2004 to allow them to legally change their gender on their birth certificate and related documents.

2. Introduction

- 2.1 At the ICO we consider equity, diversity, and inclusion to be essential to how we work. We aim to be inclusive in the way in which we deliver our services, protect, and inform the public, and employ, develop, and lead our people.
- 2.2 We are committed to fostering a diverse and inclusive workplace where all our colleagues have the opportunity to make a real difference. We are at our best when we support and look after each other, and when we trust and empower each other to be ourselves. Inclusive working environments are more productive, more creative, more representative, and more enjoyable. An inclusive workplace is in everyone's interests and is everyone's responsibility.
- 2.3 Fostering good relations – which includes promoting respect and understanding of rights between people with different protected characteristics, is a key element of the Public Sector Equality Duty within the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.
- 2.4 All protected characteristics are important to us at the ICO, and we do not prioritise any one over the other. Trans colleague's customers and stakeholders fall under a protected group. This policy

and guidance aims to ensure that the ICO is committed to creating an inclusive environment, where we embrace our inclusive ways of working, respecting each other and our stakeholders, customers and colleagues and treat all with dignity and respect.

- 2.5 The Equality Act 2010 makes it unlawful to treat someone less favourably because they are intending to, taking steps to, or have undertaken gender affirming surgery. The Act makes it unlawful to treat someone who is trans differently to other employees, customers, and service users or to refuse a service to them on the basis of their gender or gender expression.
- 2.6 The [Gender Recognition Act 2004 \(GRA\)](#) allows trans people, who are able to satisfy the GRA evidence requirements, to apply to the Gender Recognition Panel in order to seek full legal recognition of their acquired gender. If an applicant is successful, they will be issued with a full or interim Gender Recognition Certificate (GRC). A full GRC enables the person to obtain a new birth certificate which does not disclose the fact they have changed gender. Only a small percentage of trans people hold GRC, and we therefore should not assume that every trans person has a GRC. Individuals are still able to transition and change their name, pronouns and how they identify without holding a GRC.
- 2.7. Section 22 of the GRA also prohibits the disclosure of someone's gender history and the fact that they have applied for a GRC. Disclosure is a criminal offence. For ICO staff this means that we may commit an offence if we inappropriately share protected information **even with other colleagues at the ICO**. The exemptions to the prohibition are set out in [s22\(4\) and in the Gender Recognition \(Disclosure of Information\) \(England, Wales and Northern Ireland\) \(No.2\) Order 2005](#), and the [Gender Recognition \(Disclosure of Information\) \(Scotland\) Order 2005](#).
- 2.8. The ICO recognises that not all gender-diverse individuals may be legally reflected in the terms of the Equality Act or the Gender Recognition Act, but we are clear that they are fully encompassed within our inclusive workplace values and policies.

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3. Guidance for ICO Employees

- 3.1 The ICO aims to ensure that its formal policies and practices are trans-inclusive and that legislative standards are upheld. This policy re-affirms the ICO commitment to a gender diverse workplace, helps all employees create and maintain a trans-inclusive culture and provides a step-by-step guide for people managers supporting a team member's transition.
- 3.2 This section applies to employees who plan to undergo any type of gender affirming surgery or who wish to identify as a different gender but are not intending to undergo affirming surgery.
- 3.3 The ICO is committed to supporting trans employees as their affirmed gender/identity from the time chosen by the individual concerned. Help and support is also available to those who wish to explore options regarding gender identity.
- 3.4 All trans and non-conforming employees have the right to choose whether to disclose their gender identity, to whom they disclose it and the circumstances under which they disclose it. The ICO encourages trans employees to disclose this information so that appropriate support, information, advice, and guidance can be provided if needed. If an employee makes the decision to transition or wants to explore options regarding gender identity, we suggest the first step should be to discuss this with their People Manager or the Inclusion and Wellbeing Team. If individuals do not feel comfortable discussing with their People Manager, they can contact the Inclusion and Wellbeing Team directly or a member of the People Services Team. The Pride Network are also available to offer help and support.
- 3.5 People Managers with the assistance of the Inclusion and Wellbeing Team will agree a support plan with the individual to provide a supportive and co-ordinated approach to the individuals needs. We understand that each individual's experience is unique, and the format of the plan should remain flexible, however as a guide the plan should include:
 - A named contact from the Inclusion and Wellbeing Team.
 - Key dates for medical appointments. This does not include details of the type of medical appointment but provides

information relating to required time off for appointments and recuperation if required. When an individual is undergoing gender affirming surgery procedures, these will be recorded as absences, but will not count towards absence triggers.

- Whether and how this might impact on the individual's role, work patterns, performance etc.
- Following written permission from the individual, provide a summary of how and when the individual's information will be shared and managed.
- Changes to the individual's personal record, including email address and titles, detailing how and when these will change. These can be subject to change if the individual wants.
- Reasonable adjustments required to support any medical procedures needed for re-assignment, including counselling sessions.
- Guidance on the use of facilities. Individuals who have transitioned, are transitioning, or intending to transition from one sex to the other, have the legal right to use the facilities relevant to the sex they identify with. This protection is provided by the Equality Act 2010.
- What to do if facing transphobic abuse, bullying or harassment as a consequence of transitioning, through the ICO's Dignity at Work policy.
- Dates to review the progress of the plan.

An example of a Transition plan can be found in Annex A.

3.6 ICO Staff can support trans colleagues or individuals who are transitioning by;

- Interacting with your trans colleagues in ways that are respectful, friendly, considerate, and inclusive.
- Help create a positive and supportive work environment. In particular be mindful of the range of views and the need to

contribute to an inclusive culture where all can thrive and offer their best. If you witness inappropriate behaviours, be prepared to address that, and politely explain your concerns or report to your people manager who may be able to support on your behalf.

- Be guided by your trans colleague and their preferences. It is important that you avoid making assumptions – even when your intention may be well meaning.
- Thinking of the person as being the gender that they want you to think of them as.
- Use the name and pronoun that the person asks you to. If you are not sure of the right pronoun, ask, eg “What name should I use?” or “How do you prefer to be addressed?”
- At the ICO, employees are free to include their pronouns in their email signatures and to ask colleagues to refer to them in that way. It is basic good manners to refer to somebody in the way that they prefer.
- Respect people’s privacy. Do not ask what their ‘real’ or ‘birth’ name is. Calling a person by their previous name is known as dead-naming, you must call a person by their chosen or preferred name.
- Do not ask about a colleague’s surgery.
- Do not tell others about a person’s trans status.
- Respect people’s boundaries.
- Listen to the person and ask how they want to be treated and referred to and try to empathise with them.
- Understand the enormity of the step to change or present in a different gender to that recorded at birth and be supportive.
- You should also be sensitive around commenting to someone on their appearance or clothing. Your comment or compliment may be well meant and intended to be positive and supportive but that may not be how they receive it. There are no situations where making casual commentary to a third party about any individual’s personal appearance is likely to be appropriate or conducive to a positive, respectful, and inclusive workplace.

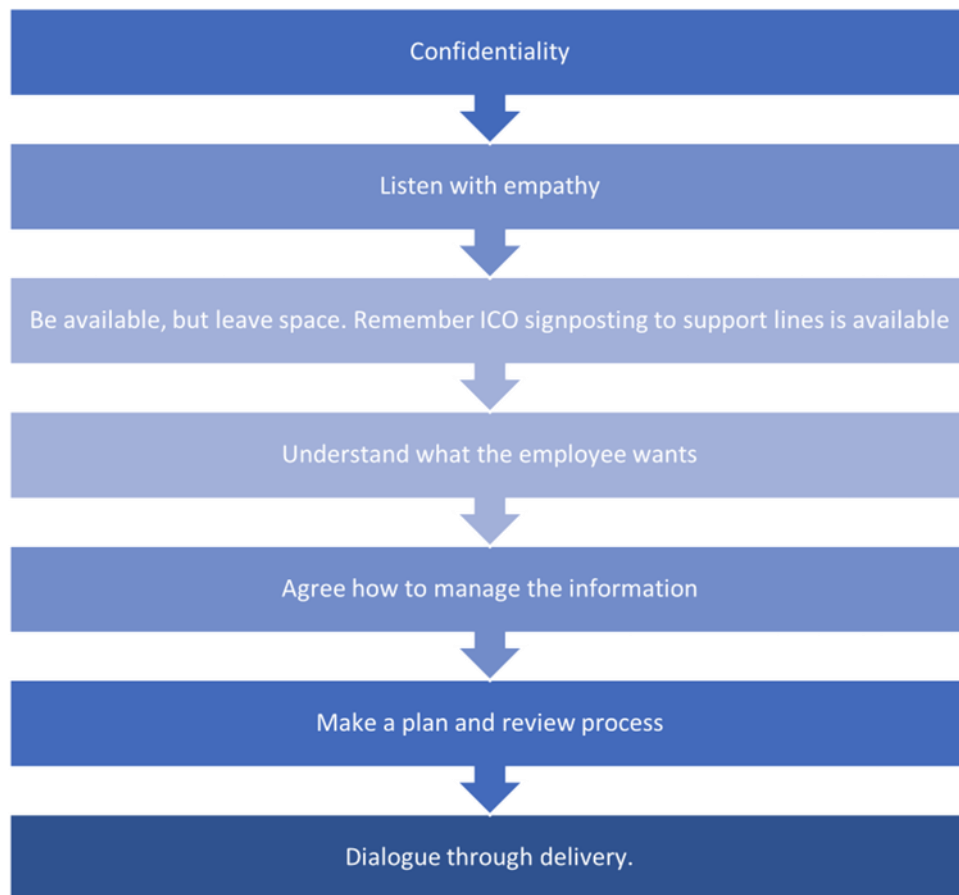
3.7 Even if you are an experienced people manager, you may not have been in the position of supporting a trans colleague before. You may

be concerned about making a mistake or saying the wrong thing. Guidance for managers on supporting a trans employee through disclosure and transition at work can be found in Section 4. Further specialised support is available through ICO Equality, Diversity and Inclusion Business partner, the Inclusion and Wellbeing Manager, and the PRIDE employee network group.

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4. Guidance for People Managers

- 4.1 While there is often an assumption that the workplace transition of a trans employee is an HR issue, in practice, their people manager may have a more direct involvement, particularly at the early stages.
- 4.2 It is important that people managers understand what may be associated with this and are clear on both legal and practical responsibilities as well as how they might be most supportive to the employee.
- 4.3 If a member of your staff informs you of their intention to start a journey of transition or they disclose their gender history and/or current gender identity, you should manage this sensitively and carefully.
- 4.4 Recognise that this step is unlikely to have been taken lightly. You should always be guided by the employee's views and preferences on how to proceed.
- 4.5 The following step-by-step considerations are intended to help you and inform your approach as a manager, but they are not definitive as each individual situation will be different. Although 'Confidentiality' always comes first, other steps may occur concurrently or in a different order.



4.6 **Confidentiality**

You **MUST** keep this information confidential and cannot disclose it to anyone else without the individual's consent. Remember that you should not even involve HR until the member of staff agrees that this may happen and when. If the employee discloses a gender history that includes them having applied for or obtained a Gender Recognition Certificate (GRC) then this information is given special protection and is known as 'protected information.' Section 22 of the GRA makes it a criminal offence for anyone who receives such information in an official capacity to disclose that information to an unauthorised individual – that includes another colleague at the ICO.

4.7 **Listen with empathy**

The individual may have been very unsure what reaction they would get, so an important first step is to listen carefully to what they have to say and offer reassurance. It is not your role to offer any form of opinion or judgement or to seek more information than the

individual is willing to share at that point. You may wish to simply affirm that:

- you appreciate the individual sharing this information,
- you recognise that it may have been difficult for them to do so,
- you are happy to support them,
- you will collaborate with them and be guided by them in any next steps.

Try to avoid rushing into possible actions, observations or opinions which may be neither appropriate nor what the individual wants or needs.

4.8 Be available but leave space

Recognise that some individuals may wish to pause at this stage having taken a big first step in disclosing but not wanting to undertake further action immediately. Leave the timeframe for any future contact or action on the matter to them – while nonetheless demonstrating that you remain available and supportive as needed.

4.9 Understand what the individual wants

As an individual's trust and confidence in receiving a fair and appropriate reaction increases then you might start to explore together what the individual wants to happen. Trans people have a wide range of experiences and objectives. One employee may be planning a gender reassignment that involves significant medical intervention and surgery, while another may simply want you to be aware of their gender identity and to use different pronouns. Someone else may be informing you because they are concerned that they are already subject to inappropriate behaviour and unwanted treatment because of their existing gender presentation or presumptions about their gender identity and want to address this. Do not make assumptions but work in partnership with the employee to build understanding and explore ways forward.

Managers need to adopt an approach that meets the needs of the employee. They also need to be able to have a constructive conversation if what the employee wants is perhaps not reasonable or deliverable. This may be because of the existing legal framework, other legitimate constraints, a misplaced understanding, or the need

to balance different rights. This is where the agreed involvement of those with specialist insight such as HR, the Inclusion and Wellbeing Team or Pride Network can be invaluable in achieving positive and sustainable outcomes for both the individual and the ICO.

4.10 **Agree how to manage the information**

Having clear and shared expectations about how the individual's information and any action that may arise from it will be handled will help build trust and confidence and avoid misplaced expectations and/or data breaches. You may want to explore and agree details around:

- Whether anything can be shared.
- What level of detail might be shared.
- What specific purposes information might be shared for.
- Who information may be shared with.
- When information might be shared.
- What actions or outcomes might be expected from sharing information.
- What the timescales for sharing are.

As a manager, while you may want to be able to get specialist advice on the specific issues from someone in People Services, you would only be able to do this if the individual themselves gave you formal permission in writing. It is nonetheless reasonable for a manager to seek general information or guidance if it does not lead to indirect disclosure or identification of any individual.

Similarly, some internal actions might only be able to be taken with a certain level of disclosure. Working through the implications together of what is possible and what the employee wants will help deliver the optimum way forward.

4.11 **Make a plan and a review process**

Depending on what you have determined through the previous stages, it could be a good idea to agree a clear plan together as detailed in section 3.6.

If the plan is, for example to change an individual's name and pronoun you should meet and agree a plan on who needs to know, when and how they should be informed and under what circumstances. For example, some individuals may choose to inform their colleagues themselves in person or in writing, or they may

prefer a designated colleague to do this for them. The plan should include how the individual would like to be addressed at which time and when records should change. Any personal data related to previous names or personal identifiers must be comprehensively updated.

Agree review meetings at an appropriate frequency that reflects the needs of the plan and agree how you will document your plan and review meetings and who will have access to that.

The plan must be entirely individually-led with trans staff having control over the whole process.

4.12 **Maintain dialogue**

Any plan will always be flexible to changing circumstances. If an employee is planning medical procedures, dates can change, and circumstances can alter. A trusting, honest and open relationship between a trans employee, their manager, and any specialist colleagues (such as HR) that may be invited into the process is important. This may involve joint problem-solving - like anticipating and planning for different scenarios or adapting agreed arrangements when circumstances change. An employee is not under an obligation to disclose more than they wish but good dialogue will help to reduce misunderstandings.

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5. Guidance for customers and stakeholders

- 5.1 ICO Case Officers can discuss any aspects of any trans related case with their manager or other appropriate colleague where it is necessary. However, any such discussions should meet the reasonable expectations of the trans person.
- 5.2 Cases can be handled following normal procedures, except where we have been explicitly told that they have obtained or have applied for a GRC, they have provided us with a copy of their GRC, or in some other way we have been actively informed that we are now holding protected information. If such cases are identified, it is the responsibility of all members of staff working on those cases to ensure that the protected information is handled appropriately.

- 5.3 In PADPCS, certain Team Managers (TMs) have been designated as points of contact for cases involving GRCs. As such, they are expected to be fully familiar with the contents of this policy and to give advice on the procedure to staff dealing with GRC cases.
- 5.4 To comply with section 22 of the GRA, cases need to be restricted to only the people who need to access them. For this reason, each Group in PADPCS has one designated rep who will deal with Gender Recognition cases for that Group. The designated rep will be familiar with this policy. The designated reps must be given access to:
- The Gender Recognition cases site
 - The Protected Cases inbox
- If the designated rep for the Group changes, a new rep must be appointed. The new rep must be made familiar with this policy and all current, open cases which fall under the scope of that Group must be handed over.
- 5.5 The procedure to be followed by PADPCS employees when dealing with a GRC case can be found in Annex B – M. This guidance is for internal use only and not for wider publication.
- 5.6 The procedure to be followed by Information Access employees can be found in Annex J. This guidance is for internal use only and not for wider publication.

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6. Further support

- 6.1 At the ICO the EDI board, EDI steering group and staff networks are committed to raising awareness and advocating EDI issues including those relating to trans people.
- 6.2 The Inclusion and Wellbeing Business Partner is our operational lead for EDI and will ensure best practice is adhered to.
- 6.3 The Pride Network aims to support positive representation, and the treatment of LGBTQ+ individuals and groups with dignity and respect.

6.4 Please see the dedicated IRIS pages for more information about the work of the EDI board and staff networks.

6.5 Further external sources of information can be found at:

- <https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-discrimination>
- <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/sexual-orientation-discrimination/factsheet#15423>

Whilst the ICO is not aligned to these organisations, you may find the following sources of information useful:

- <https://www.stonewall.org.uk>
- <https://lgbt.foundation/>
- <http://www.gendertrust.org.uk/>
- [Home - LGBT Foundation](#)
- [Gender.Wales – Empower | Inform | Support](#)
- [TransgenderNI – Supporting and advocating for trans people in Northern Ireland](#)
- [Scottish Gender Identity Services - Scottish Trans](#)
- [Mindline Trans + | Mind in Somerset](#)

Additional support can be received through:

- BHSF counselling 24/7 support line – 0800 072 0353
- BHSF GP 24/7 call line – 0800 206 2576

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7. Version history

Version	Changes made	Date	Made by
1.0	First draft	March 2023	People Services
1.1	Updated following feedback from TU's and staff networks. Reviewed by EDI Board	May 2023	People Services

1.2	Updated section 6.5 to clarify organisations that the ICO are not aligned with but may provide useful information	October 2023	People Services Approved by EDI Board
1.3	Added section 2.7 Updated process for assigning GR case reps in 5.4 Removed templates and inserted links to versions on EDRM	May 2024	PADPCS

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Annexes

Annex A. Example Transition Plan

Name of employee

Name of point of contact

Completion of this transition plan is voluntary. It is up to you what information you feel comfortable to share. The contents of this plan will be kept strictly confidential and will not be shared more widely without your consent.

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Likely areas that need to be discussed	Notes on discussions and any decisions (dated for clarity)	Who is responsible for actions identified? By when?
Have I settled on a preferred name and gender and when I want this to start from?		
What pronouns would I like to be known by?		
Do I want to/or am I ready to legally change my name and/or gender? What documents do I need?		
Do I want to medically transition (or already started)?		
Who do I now want to tell and how?		
How and when will personal information be updated?		
Do I need more support and information on gender identity?		
Do I need any adjustments to my workplace or working practices?		
Am I aware of the policies which support me?		
If I am considering surgery, are the timescales known?		
Key dates for appointments		
Who do I want to share this document with?		
Anything else to discuss?		

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