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# Trans & Non-Binary Equality at Work

## Model Employer Policy

This GMB model workplace policy is part of a series of workplace model policies drafted for employers to adopt as part of their suite of workplace policies.

The model policy is intended as a guide, and it can be adapted to be appropriate to your workplace, sector and workforce.

Some sectors will need specific sections adding and some parts may not be relevant to your sector and can be removed. GMB workplace representatives and employer representatives can work together to make sure the version of the policy you adopt works for your workers.

There are some references to the Public Sector Equality Duty, which will not be relevant to non-public sector employers.

Throughout the model policy, '[Employer]' is used to indicate where your employer name is to be included. There are other sections too where specific detail, links or policy names will need to be added.



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The GMB Trans and Non-Binary Equality at Work campaign was produced in 2022 with GMB trans and non-binary activists from across the UK and Ireland. It was developed from the 2014 GMB Transgender Equality Toolkit.

Trans and Non-binary Equality at Work Policy written by Cerys Way and Eleanor Saunders.





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# **Trans & Non-Binary Equality at Work**

[Employer name/logo]

Equality Impact Assessment date:

Date adopted:

Review through collective bargaining structures including input from GMB Union:

Date of review due:



<b>Table of contents</b>	<b>Page Number</b>
<b>1. Policy statement</b>	<b>1</b>
<b>2. Aims and objectives</b>	<b>3</b>
<b>3. Legislative Compliance</b>	<b>4</b>
<b>4. Equality monitoring/data collection</b>	<b>6</b>
<b>5. Who is affected/what might this look like?</b>	<b>7</b>
<b>6. Workplace Factors, Support, Actions and Adjustments</b>	<b>9</b>
<b>7. Responsibilities</b>	<b>16</b>
<b>8. Training</b>	<b>18</b>
<b>9. Access to workplace support</b>	<b>19</b>
<b>10. Signposting, support and further information</b>	<b>20</b>

## Policy Statement

[Employer] is committed to ensuring that all individuals are treated fairly and with dignity and respect in their working environment. It is also committed to ensuring the health, safety and wellbeing of the workforce.

This policy recognises that trans and non-binary workers may need additional consideration, support and adjustments at work.

[Employer] will take a proactive stance and will promote a greater understanding of gender diversity and seek to eradicate any exclusionary or discriminatory practices.

This policy demonstrates our commitment to ensuring that employees are supported.

[Employer] recognises that some workplace practices may have health and safety implications, including implications related to stress and mental health, for trans or gender diverse workers.

[Employer] has a positive attitude to trans workers and will work proactively to make adjustments where necessary to support all workers in order to ensure the workplace does not have a detrimental impact on their wellbeing.

[Employer] wants to ensure that trans workers feel comfortable to discuss their experiences, where they wish, and to ask for support and adjustments so they can thrive in a safe workplace. [Employer] has a responsibility to create a stigma-free environment; this will encourage trans workers to feel confident and to discuss the steps needed to support their needs.

[Employer] recognises that transphobic incidents may still occur in the workplace and that workers may be reluctant to raise complaints at the risk of being 'outed'. [Employer] will protect complainants' privacy in all cases. Additionally, an anonymous route to report issues is available via [insert details – e.g. intranet, via external organisation, via email address].

Training will be provided to help managers understand the experience of trans workers and act accordingly, without breaking the confidentiality of the individual. Training will also be available to employees.

[Employer] wants trans workers to remain in their usual role without any unwanted change or disruption throughout any change to their gender presentation or any social or physical transition process. [Employer] will make any necessary reasonable adjustments to enable this.

**Note on Terminology** – The term ‘trans and non-binary worker’ is used throughout the policy. This policy is inclusive of all workers, specifically including those who are transgender, transsexual, non-binary, gender-fluid, genderqueer or gender diverse. ‘Trans’ is an umbrella term that includes, but is not limited to, these identities and groups.

For more information about the terms people prefer to use, see GMB Union’s ‘Terminology’ document at <https://tinyurl.com/yjmp5d7v>



## Aims and objectives

In a 2021 survey, two thirds of trans workers stated that they didn't feel comfortable revealing their trans status at work.<sup>1</sup>

Seven in ten trans workers say their experience of workplace harassment or discrimination has a negative effect on their mental health.<sup>2</sup>

[Employer] is committed to ensuring that trans workers have a positive experience in our workplace[s].

This policy is intended to provide clarity and direction on how [Employer] will support trans workers, including through any change to their gender presentation or any social or physical transition process.

[Employer] recognises that individual trans workers' experience is diverse, and therefore different levels and types of support and adjustments may be needed.

We recognise that trans people are from all backgrounds, sexual orientations, ages, ethnicities and socio-economic backgrounds, can be in relationships or single, may be parents, may be disabled and/or may have a faith or religion. It is particularly important that no assumptions are made by managers or colleagues about who can be or is trans.

[Employer] will seek to challenge stereotypes that may exist within the organisation about trans workers and gender more widely.

The employer will work with the GMB to ensure implementation of these objectives.

[Employer] encourages workers to seek advice, support and representation from their GMB Union rep.

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<sup>1</sup> "Trans employee experiences survey: Understanding the trans community in the workplace" (2021) - research conducted by Totaljobs: <https://www.totaljobs.com/advice/trans-employee-experiences-survey-2021-research-conducted-by-totaljobs>

<sup>2</sup> How to be a good trans ally at work – TUC: <https://www.tuc.org.uk/resource/how-be-good-trans-ally-work>

## **Legislative compliance**

### **Equality Act 2010**

The Equality Act 2010 (England, Scotland and Wales) includes 'gender reassignment' as one of the nine 'protected characteristics' – alongside age, disability, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

This Act protects against direct and indirect discrimination; harassment; and victimisation of people who are trans, are perceived to be trans, or are 'associated' with trans people.

In Northern Ireland, the Sex Discrimination (Gender Reassignment) Regulations (NI) 1999 provides similar protection.

Under the Equality Act, it isn't necessary for people to have a medical diagnosis or have received any particular treatment in order to be protected.

In 2020, an Employment Tribunal<sup>3</sup> held that the word 'process' should be understood to be a 'personal process' entailing a 'spectrum of moving away from one's birth sex'. To be protected 'a person could be at any point on that spectrum'. This includes persons who identify as non-binary.

### **Public Sector Equality Duty**

The Equality Act includes a duty for public sector bodies to take account of equality in their work, including promoting equality and fostering good relations between groups and removing disadvantages experienced by people with protected characteristics.

### **Gender Recognition Act 2004**

The Gender Recognition Act 2004 allows individuals to gain full legal recognition of their gender through getting 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.

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<sup>3</sup> Ms R Taylor v Jaguar Land Rover Ltd: 1304471/2018: <https://www.gov.uk/employment-tribunal-decisions/ms-r-taylor-v-jaguar-land-rover-ltd-1304471-2018>

Once a person receives a Gender Recognition Certificate (GRC) they are legally of that gender for all purposes.

Section 22 of the Act makes it a criminal offence for a person in an official capacity (e.g. an employer or prospective employer or in the conduct of business) 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.

Many trans people choose not to apply for a GRC for a variety of reasons, including the bureaucratic nature of the application process. [Employer] will respect the gender that trans workers identify with, whether or not they have a GRC.

A trans worker does not need a GRC in order to be treated as the gender they identify as in the workplace. Employers should not ask whether a worker has or intends to apply for a GRC or ask workers to provide this.

Nb. As of early 2022, proposals for reform of the Gender Recognition Act 2004 for England and Wales are underway. A date for the completion of any reform has not been confirmed.

## **Other**

Other legislation applies to all workers, including the Data Protection Act 2018 (GDPR) and the Employment Rights Act 1996.

## **Equality monitoring/data collection**

In the public sector, monitoring the equalities characteristics of workers (and service users) is established practice, particularly at recruitment stage. The Equality Act 2010's Public Sector Equality Duty requires employers to promote equality between groups, meaning that knowledge of the diversity and protected characteristics of the workforce is important.

[Employer] recognises that it can be useful and is often good practice for non-public sector employers to also monitor the equality characteristics (gender, age, ethnicity etc) of their workforce. This can help to determine whether the workforce is representative of local communities, whether people with certain characteristics are disproportionately represented in lower pay grades, and more.

A number of advice guides exist for how to phrase an equality monitoring question on gender identity. [Employer] will ensure that our monitoring questions are up to date and in line with guidance from expert LGBT+ organisations. Resources in the 'Signposting' section of this document provide information on sex and gender reassignment monitoring questions, and when and where it is appropriate to ask these.

An important point is ensuring that sex, gender identity and sexual orientation are not conflated. Separate questions can be phrased appropriately to gather information on the number of trans workers in an employer or workplace, and this is distinct to gathering information on the gender of workers.

[Employer's] LGBT+ staff network will be consulted on the introduction or changes to gender identity monitoring questions.

It must be understood that monitoring giving a zero return on trans workers is not a secure indicator that no trans people are present and must not be used by the employer an excuse to do nothing.

[Employer] recognises equality monitoring must be strictly confidential and trans workers must be confident that they can state their gender identity and/or trans history without being identified.

## **Who is affected/what might this look like?**

[Employer] recognises that trans workers are diverse and that trans people are from all backgrounds, sexual orientations, ages, ethnicities and socio-economic backgrounds, can be in relationships or single, may be parents, may be disabled, and/or may have a faith or religion.

Many trans people have intersectional identities, meaning that discrimination and marginalisation can affect them in different ways. They may experience - for example - racism or ableism in ways which impact in unique ways in combination with prejudice around their gender. The impact of discrimination can be very different depending on individual trans people's life experiences.

It is particularly important that no assumptions are made by managers or colleagues about who can be or is trans.

Some trans people may choose to seek medical support during their transition, which can include many different aspects such as taking hormones or having surgery. Others may choose to make social changes - for example changing the way they look or dress or asking people to use different pronouns or names that affirm their gender. Equally, some trans and non-binary workers may choose not to change their name, pronouns or gender presentation, or may choose not to do so in the workplace.

Further, [Employer] recognises that there is no set, correct or accepted way to be trans or to be cis. [Employer] will treat all workers - whether cisgender, transgender, transsexual, non-binary, gender-fluid, genderqueer or gender diverse - as individuals. We recognise the right of all workers to freely express their gender identity, expression and personal style as they wish - as well as the benefits brought to our organisation by workers being able to bring their true selves to work.

[Employer] acknowledges that affirming a person's gender identity and expression - for example, by using the name and pronouns which they have asked to be used - and supporting them to live as their authentic self can have a hugely positive impact and validates that person's experience.

[Employer] appreciates that trans workers might not be 'out' in every aspect of their life and may only be comfortable discussing their identity with certain people or in certain places. For some, this may not include the workplace. Where colleagues or managers have seen or spoken to colleagues outside of work, any information shared should be treated as confidential unless otherwise stated.

[Employer] recognises that some workers may join the organisation with a trans history or having previously lived in a different gender identity; that workers' gender identity or presentation may change during the course of their employment; that some workers' identity or presentation may be fixed, and others' may change throughout their life course.

## **Workplace factors, support, actions and adjustments**

For some trans workers, transitioning can be a linear process of changing their gender presentation from one binary gender (e.g. woman) to another (e.g. man). For others, there is not a set process or timeline which they will follow. Gender identity and presentation may for some workers be fluid or fluctuate and may also vary over time.

Similarly, job roles at [Employer] are diverse and some factors which are relevant for some workers will not be for others.

This means that this policy does not follow a set timeline or list of actions, as other workplace policies might.

Instead, this section highlights areas which may be important to some, but not all, trans people. Workers and managers can select and focus on the areas below which are relevant to their situation.

## **Bullying and harassment**

As outlined in the legislative compliance section above, employers have a legal duty to protect trans and non-binary workers from direct and indirect discrimination, victimisation and harassment. Transphobic incidents may also be prosecuted as a hate crime offence.

Where a trans or non-binary worker at [Employer] reports bullying or harassment, our existing bullying and harassment policy will be implemented. Those responsible for supporting workers who make reports, as outlined in the Access to Workplace Support section below, will ensure that workers are familiar with this policy and how to report incidents.

It is vital that the confidentiality of trans and non-binary complainants is protected, and information about incidents only shared with others where the worker consents.

[Employer] is aware that workers may be reluctant to make complaints in order to avoid being 'outed' in the workplace. [Employer] has therefore created an anonymous method of reporting transphobic incidents. This can be accessed via [insert details].

## **Customer/client-facing roles**

Trans and non-binary workers in customer or client-facing roles, who have a regular client list or customer group, may wish to inform customers of any changes to their name, pronouns or presentation, or may wish for [Employer] to facilitate this. [Employer] will work with the worker to ensure this is done as the worker prefers.

Some trans and non-binary workers in customer or client-facing roles may want to move during roles any transition process, or part of it, or permanently. Redeployment should be done only at the request of the worker, and [Employer] will be accommodating, flexible, and supportive in this.

A zero-tolerance approach to all kinds of harassment, abuse and victimisation from third parties protects all workers and creates safer working environments. Where needed, [Employer] will reiterate current zero tolerance policies to customers and clients or inform them of new policies in the most appropriate way. This is regardless of whether trans employees wish to stay in customer-facing roles or not.

## **Disclosure and references**

[Employer] recognises that workers have the right to choose who to share or not share information about their identity with.

Managers should remember that it is a criminal offence for a person in an official capacity to disclose that an individual has applied for or received a Gender Recognition Certificate without the permission of that individual. Sharing a person's gender identity or history without the person's permission may also constitute harassment under the Equality Act 2010.

Colleagues who are or become aware of a worker's trans identity or gender history must not share this without the worker's consent.

Where [Employer] is asked to provide a reference to a new potential employer of a current or previous worker, the worker's current name and pronouns will be used in the reference. Those writing references should note that this may have changed in the case of previous employees, and ensure that they adhering to the worker's preference.

## **External bodies – professional registration, criminal records checks**

Some workers may be required to maintain professional registrations. [Employer] will assist the worker in ensuring that their professional body complies with that body's process for updating name and gender records.

Some roles require workers to complete a Disclosure and Barring Service criminal record check. A confidential service is provided by the DBS for trans applicants.<sup>4</sup>

## **Pensions**

Changing gender from man to woman or vice versa may have implications on occupational and state pension entitlement and pension and national insurance contributions. It may be appropriate to seek the advice of pension experts to ensure that the most beneficial outcome is negotiated.

## **Recruitment**

Job applicants do not have to disclose their gender history or trans status to potential employers.

As part of monitoring the protected characteristics of job applicants in order to assess the diversity of workplaces, [Employer] may ask applicants to declare their gender identity along with other characteristics like ethnicity and age. This information will be separated from application forms and will never form part of the selection process.

Where an applicant or offer-holder does choose to disclose their trans status or gender history, this will have no bearing on managerial decision-making.

The Equality Act 2010 does contain a 'genuine occupational requirement' provision where being assigned a particular sex at birth is a requirement of the role. Such instances are extremely limited and legal advice must be taken to ensure the validity of using this provision.

Sometimes, a CV or job history may make it apparent that an applicant has identified as a different gender previously (for example if they attended a single-

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<sup>4</sup> <https://www.gov.uk/guidance/transgender-applications>

sex school). Managers who become aware of this information will treat it with confidentiality and not ask questions of the applicant.

References from previous employers may also inadvertently reveal a trans person's gender history. Managers who become aware of this information will treat it with confidentiality.

### **Redeployment options**

Some trans workers may express a preference to move to a different department or section if they change their gender presentation, identity, name and/or pronouns in the course of their employment. Some workers find this helps their transition.

[Employer] will consider if this is possible for a trans worker, but only at the request of the worker.

If a worker is going through medical treatment, depending on their role they may require a temporary redeployment (e.g. to avoid manual labour during physical recovery).

### **Talking to colleagues**

Some trans and non-binary people may want to communicate to their colleagues any changes in gender identity or presentation they may undertake in the workplace. Others may choose to share information about their gender identity with fellow workers – even if they are not making any changes to their presentation, name or pronouns (for example, if a non-binary worker would like to share information about the pronouns they use).

Information for colleagues could include any time off which the worker is expecting to take; any change in name; any change in pronouns; any changes in uniform or facilities the worker will use; any change in duties (for example after medical treatment).

In some workplaces it may also be appropriate to send a message to clients or service users; see the section [above] on Customer and Client-facing roles.

Workers may want to talk through with a manager, union rep or supportive colleague how they deliver a message to colleagues. Some workers prefer a manager to send a message to their department or section explaining some of

the things which colleagues may need to wish to know. It could be worth sharing the Factsheet or Terminology document from this toolkit to explain terms which fellow workers may not yet know. There may be other resources which the worker chooses to share, from trans organisations.

It should always be the workers' choice how much information they may want to share, and managers should be supportive in keeping any questions respectful, appropriate and non-invasive.

### **Time off for appointments**

Some trans workers may wish to undergo treatment which may include counselling, hormone therapy or surgery. This will probably necessitate taking time off work for appointments and recovery. Some workers may need to travel a long distance for appointments (which may take place at specialist clinics, which are limited in number across the UK and Ireland) and may be given these at short notice.

[Employer] will be accommodating, flexible, and supportive during this time and may need to make temporary adjustments to job requirements, rotas and hours.

Time away from work for appointments and recovery must be treated the same as for those who are absent due to other medical treatment in order to avoid constituting discrimination under the Equality Act 2010.

These absences will not be counted in relation to absence monitoring or taken into consideration during performance monitoring or during redundancy procedures.

Absences will not negatively financially impact on workers. [Employer] will provide paid special leave for employees to attend transition-related appointments and treatment.

### **Toilet and changing facilities**

Trans workers should use the toilet of their choice and [Employer] will take steps to ensure this is possible.

Provision of gender-neutral toilet and changing facilities is of benefit for many workers including carers, those accompanying family members, and trans and non-binary workers. Managers should work with facilities or office management colleagues to ensure the provision of gender-neutral facilities. Gender-neutral facilities can include stalls which include washbasins and room for changing, to ensure privacy for all workers.

[Employer] will not pressure trans people to use accessible toilets, which are often gender neutral, where they would not otherwise do so; however, this may be their choice.

Changing from using one gendered facility to another (e.g. from using men's toilets to women's) can be stressful for trans people; many experience harassment when using the facility which matches their gender and some report avoiding using the toilet in public, which can have severe health outcomes. Harassment is unacceptable in the workplace and measures should be taken to ensure that trans workers do not experience difficulty accessing facilities

### **Updating staff records**

Some trans workers who change name and/or pronouns in the course of their employment will need to have their staff record updated.

Electronic records will be updated in a timely manner at a point at which the worker chooses. [Employer] will make sure that records are not linked to out-of-date information – for example former name and titles. Many workers will need a new email address if their name has changed; care should be taken to ensure this process does not reveal a name which is no longer used.

At the same point, other records and documents should be updated – including security passes and staff directories. [Employer] will not charge workers for replacement passes.

[Employer] will update any paper records where possible. Where this is not possible, files will be kept secure, marked confidential, and kept separately from the main HR file. Only a named contact should be able to access these, and only where strictly necessary.

[Employer] complies with the requirements of the Data Protection Act 2018 (GDPR) and will not keep out of date records when unnecessary.

## **Uniforms/dress code**

Gender neutral uniforms and dress codes provide benefits for many workers including trans, non-binary and gender diverse people.

Where uniforms and dress codes are gendered, [Employer] will allow flexibility to trans workers, giving a choice for them to wear the uniform they are most comfortable with.

Where workers use PPE in the course of their work it is important to ensure that the allocated equipment is risk assessed and appropriate for the individual worker.

Workers will not be charged for new uniforms.

Changing from wearing one gendered uniform or dress code to another can be stressful for trans people; many experience harassment when wearing clothes of their choice in public. Harassment is unacceptable from colleagues or third parties in the workplace and measures should be taken to ensure that trans workers do not experience difficulty in this regard.

## **Responsibilities**

### **[Employer Senior Management Team/board]**

[Employer's SMT] has a responsibility to ensure that the general principles of this policy are followed by all and to support mechanisms to aid the promotion of the wellbeing of all staff including that of trans workers.

### **Line managers**

- Be ready and willing to have open discussions with trans workers, treating discussions sensitively and professionally
- Support the worker in accordance with this policy and in any way that is needed and appropriate
- Maintain absolute confidentiality of trans workers at all times. If it is necessary to seek additional advice and/or support from other departments or bodies, then ensure this is agreed with the individual worker
- Ensure agreed adjustments and changes are adhered to and ensure ongoing dialogue and review dates
- Investigate any instances of harassment, bullying or discrimination

### **Occupational Health**

- Provide support and advice to individuals and Line Managers where relevant, for example on recovery from surgery. This will not apply to all trans workers as not all trans people opt for medical or surgical changes
- Provide support and advice to HR and Line Managers in determining and agreeing reasonable adjustments, if required

### **HR**

- Offer guidance to Line Managers on the interpretation of this policy
  - Monitor and evaluate the effectiveness of this policy
  - Audit and Review (evaluating effectiveness)
  - Work with relevant training departments to roll out training for managers and staff
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**IT/Estates**

- Make updates and changes to records and systems on the request of trans workers and their managers, treating any information shared sensitively and professionally

**Colleagues**

- Treat trans colleagues with respect, dignity and support at all times
- Maintain confidentiality of any information shared by colleagues

## Training

[Employer] will ensure that managers receive training around the use of this policy and on equality for trans workers.

Trainers will be LGBT+ specialists. [Employer] LGBT+ staff network will be consulted on which training organisation will deliver the training.

The training will include, but is not limited to:

- Any additional consideration, support and adjustments that trans and non-binary workers may need
- The importance of breaking down stigma and taboos
- What support is available/should be given by line managers
- How to carry out risk assessments
- Information around leave for medical appointments
- The importance of maintaining confidentiality
- Other supportive measures managers should put in place

[Employer] will carry out regular training in the workplace for all staff on trans awareness, equality, issues in the workplace and what support the employer, managers and colleagues can put in place.

On rare occasions, [Employer] may identify a concern with prejudice against trans people in a particular department or workplace. In this instance, [Employer] will provide training on trans issues, equality, and tackling transphobia, alongside addressing any issues through our existing grievance and disciplinary procedures and in line with our policies on [Dignity at Work/Equality and Inclusion/harassment and bullying], where appropriate.

A number of training providers and courses are listed in the Signposting section below.

**Access to workplace support**

[Employer] recognises that different adjustments and levels of support may be needed for different individual trans workers.

[Employer] is committed to ensuring that line managers are understanding and provide appropriate support and adjustments when needed.

**Alternative point of contact/support**

Although all managers are expected to take a positive and supportive approach towards discussions with trans workers, [Employer] understands that some individual workers may feel uncomfortable talking directly to their line manager if they are experiencing problems.

Therefore [Employer] suggests other sources of support including [the LGBT+ staff network, a trained person from HR/the Employee Assistance Service].

[Employer] also understands that trans workers may wish to approach another manager whom they trust or may wish to approach their union rep for support.

**Trade Unions**

Trade unions play a vital role in supporting their members. Many members may wish for their trade union rep to accompany them to meetings with their manager or HR about issues at work. [Employer] fully supports this.

**Outside Organisations**

External trans and LGBT+ organisations may provide a valuable source of support. A list can be found below.

## Signposting, support, and further information

ACAS – Supporting trans employees in the workplace

<https://www.acas.org.uk/supporting-trans-employees-in-the-workplace>

Gendered Intelligence

<https://genderedintelligence.co.uk/>

GIRES (Gender Identity Research & Education Society) – E-Learning

<https://www.gires.org.uk/e-learning/>

GALOP – Transphobia

<https://galop.org.uk/resource/transphobia/>

gov.uk – Equality Act

<https://www.gov.uk/guidance/equality-act-2010-guidance>

LGBT Foundation – Monitoring Sexual Orientation and Trans Status

<https://lgbt.foundation/monitoring>

Mermaids – Training

<https://mermaidsuk.org.uk/training/>

Scottish Trans and Stonewall Scotland – Getting Equality Monitoring Right (PDF download)

[https://www.stonewallscotland.org.uk/system/files/getting\\_equalities\\_monitoring\\_right.pdf](https://www.stonewallscotland.org.uk/system/files/getting_equalities_monitoring_right.pdf)

Stonewall – The Truth About Trans

<https://www.stonewall.org.uk/truth-about-trans>

TUC – e-module on Supporting Non-binary Workers

<https://www.tuc.org.uk/resource/supporting-non-binary-workers-0>

TUC: Transphobic hate incidents and crimes – A guide for trade union members and reps

<https://www.tuc.org.uk/resource/transphobic-hate-incidents-and-crimes>

