

## LGBT+ workforce monitoring

Employers collect a range of data about their workforce. Some of this can be used to make a real difference to equality. Data can reveal barriers to employment or whether certain groups are over-represented in redundancies or disciplinarys. Steps can then be taken to remove barriers and address discrimination.

Monitoring of gender and ethnic origin is well established in public sector employment. Historically, there has been more caution about collecting information on workers' sexual orientation or gender identity. Some people still keep their sexual orientation or gender history to themselves at work, to avoid discrimination.

However, sexual orientation workforce monitoring can play a significant part in pushing forward equality policies, if done well. If done badly, it will produce no useful data and can alienate both LGB and non LGB workers.

There are mixed views from the trans community on monitoring trans identity. The relatively small numbers raise serious issues of confidentiality in reporting which are discussed below. There is an explanation of trans terminology on page 8.

This guidance helps branches negotiate effective monitoring. We recommend you read this guidance in full, along with UNISON's bargaining factsheets on LGB Workers Rights and Transgender Workers Rights which are online at [unison.org.uk/out](http://unison.org.uk/out) . If you only have a few minutes, see the preferred wording of questions on page 3-4 and the checklist on page 7-8.

## Equality for LGBT+ workers

Negotiating equality for LGBT+ workers is a key UNISON objective. Sexual orientation, gender identity and gender expression are workplace issues, not just private matters. Too many LGBT+ workers face discrimination and harassment when looking for work and in their jobs. Too many LGB people feel unable to be open about their home and family at work. Levels of prejudice and discrimination against trans workers are even higher.

The 2010 Equality Act (England, Scotland and Wales) requires public bodies to take active steps to advance equality for - and eliminate discrimination against - LGBT+ workers and service users. Northern Ireland legislation includes a duty to promote equality between people of different sexual orientations and the gender duty covers trans people.

It's vital to take equality for LGBT+ workers into account from the start, rather than just dealing with discrimination after it has happened. UNISON is clear that monitoring can play an important part in this.

## What's the point of monitoring?

There is no point in collecting data just for the sake of it. The purpose must be to identify discrimination and build equality. For example, ethnic monitoring can provide evidence of whether an employer is recruiting from across a local population, whether Black staff are progressing at the same rate as white staff and whether Black staff are clustered in certain departments, jobs or grades. This can be checked over time to see if action plans to overcome discrimination and disadvantage are working.

Without such evidence, it is too easy for equality objectives to remain as aspirations.

Even if they are not out at work, LGBT+ people want a clear sign that their employer takes LGBT+ equality seriously and recognises that they have LGBT+ workers. Too often, attempts to raise LGBT+ equality are met with the response 'We've none of that sort here!' The assumption that everyone is the same does not make for a comfortable workplace.

LGBT+ workers often want to indicate their presence, providing they can do this confidentially. It puts LGBT+ equality on the agenda and can contribute to building an inclusive workplace.

When LGBT+ monitoring is first started, the data will probably be unreliable. But if the employer demonstrates their commitment to building an LGBT+ friendly workplace, data will improve. It can then be used to identify and act on any 'no go' areas, trends towards job segregation or lack of career progression. It can be a measure of the effectiveness of equality action plans, training or other initiatives.

## Getting started

First make sure there are strong, well publicised LGBT+ equality policies. There are UNISON bargaining factsheets on equality for LGB workers and for transgender workers on the UNISON website. Policies should be backed up by action plans, including training. Implementation should be regularly monitored and reviewed.

Workforce monitoring has a key role in taking this forward.

## What should monitoring forms say?

Monitoring forms should explain why people are being asked to provide the information; how the data will be stored (and for how long) and how it will be used.

People are more likely to fill in this data if the form uses language they are comfortable with. As with all communities, LGBT+ people of different generations and backgrounds use different words to describe themselves. Questions about language could form part of a preparatory consultation with LGB and trans members.

Questions on sexual orientation and gender identity should include a 'prefer not to select' option.

For **sexual orientation**, UNISON uses the language of the law: lesbian, gay, bisexual or heterosexual/straight.

A supplementary question for lesbian, gay and bisexual people, asking whether they are 'out' at work, can be revealing. It shows the extent to which people feel safe and confident at work and allows the employer to track any change over time.

UNISON is working with other unions, LGBT+ organisations, NHS Employers and local authorities to implement an agreed 'information standard' for sexual orientation monitoring across NHS services and adult social care in England, for staff and service users.

This records data as follows:

- 1 heterosexual or straight
- 2 gay or lesbian
- 3 bisexual
- 4 other sexual orientation not listed
- U person asked and does not know or is not sure
- Z not stated (person asked but declined to provide a response)
- 9 not known (not recorded: this classification is not intended to be visible to

staff/service users – it is to account for missing data in analysis)

Any question about **gender identity or gender history** should be free-standing, not part of questions on sexual orientation or gender. There is a lot of bad practice in trans monitoring, based on ignorance, which spreads misunderstanding rather than increases confidence in action for equality.

## **DO list trans as trans**

Questions on gender identity should always be in their own section. Different trans people describe themselves differently and language is evolving in this area. Whatever terms you use, it is a good idea to include a jargon buster.

Following consultation with our trans network, UNISON has adopted:

☺ Do you identify as trans/transgender or have a trans history?

yes  no  prefer not to select

Another question recommended by trans groups is:

☺ Is your gender identity **the same as** the gender you were assigned at birth?

yes  no  prefer not to select

And

☺ Do you feel able to discuss your gender identity/gender history with colleagues at work?

yes  no  with some people, but not all

## **DO NOT list trans as a ‘third sex’**

The following type of question is not acceptable:

☹  Male  Female  Transgender

The vast majority of trans people identify as women or men.

## **DO NOT list trans as a sexual orientation**

This is also unacceptable:

☹  Heterosexual  Lesbian  Gay  Bisexual  Transgender

Being trans is not a sexual orientation. Trans people may be straight, lesbian, gay or bisexual.

## Maintaining confidentiality

Significant numbers of LGBT+ workers fear to be open about their sexual orientation or gender identity/gender history. Outing someone without their permission may amount to unlawful harassment. Management should explain what they are setting out to achieve and seek views from unions and the workforce early in the process.

Sexual orientation data should not be stored on people's personnel files unless confidentiality can be guaranteed. Some people may wish to record a same sex partner on their file as next of kin, but this is a different matter.

The *Data Protection Act* – and GDPR - will not apply if the survey is anonymous and the data cannot be identified with individuals. If the information is not anonymous, the Data Protection Act regards it as 'sensitive personal data' and it can only be stored if the individual gives their permission. Permission can be given by ticking a box giving consent, provided the individual is reminded of their right to decline to answer.

Confidentiality is even more important for information about gender history. S.22 of the Gender Recognition Act 2004 gives particular legal rights to people applying for/who have a Gender Recognition Certificate. It is a criminal offence to pass on information acquired 'in the course of official duties' about someone's gender recognition, without the consent of the individual affected. 'Official duties' include employment, trade union representation or supply of business or professional services.

A good check for confidentiality is to map the flow of information from the person who supplies it to the final reporting stage. Check how many people work directly on the data and how many other people have access to it. There should be as few steps in the chain as possible and other people's access should be prevented.

When monitoring small numbers, even anonymous forms can 'out' people if there is more than one question on the form. This can also happen in large workforces where questions break people down into smaller groups, such as particular grades or departments. Reporting that an organisation of 5,000 staff includes 154 LGB people would be fine. But reporting that a small department included 2 LGB people or one trans person could put their privacy at risk.

Some employers use an outside organisation to conduct monitoring – but care must still be taken in how data is reported.

## What if people object during the consultation?

Listen to what different groups of people are saying. If most LGB or trans people are opposed, this suggests that the organisation is not ready. More work is needed to make equality policies effective and raise levels of confidence.

If non-LGBT+ people object, find out what their objections are and see if these can be answered by clear information on the purpose and practice.

Don't be surprised if there are a fair smattering of 'spoiled' forms or even forms with abusive comments on them. This provides evidence of the need to address prejudice in the workplace.

## How should results be interpreted?

Government actuaries estimate that 6-8% of the working population are in same sex relationships. But we do not know how this varies in different parts of the UK. For trans workers, the numbers are much smaller and in some workforces may have no statistical significance.

Check for any obvious errors in the results. Very high numbers of workers identifying as transgender may mean that people have misunderstood the question.

Confidential monitoring may show that 8% of the workforce identify as lesbian, gay or bisexual, but this is not necessarily evidence of an LGB friendly workplace. It could still be that nobody feels safe enough to be out about their sexual orientation at work. This is why a question on whether LGB people are out at work is useful.

The experiences of lesbian, gay or bisexual workers and of trans people may be very different, so it is important to look at each group separately. If possible, it is also useful to check whether there are other differences, say between women and men, Black and white LGBT+ workers, and so on.

How people identify may change, so monitoring once on starting employment will not necessarily give an accurate picture over time.

Low rates of return at the introduction of monitoring are quite likely. If these do not improve, this

suggests a problem with the equality policy and its implementation.

## What else can be monitored?

Remember that individual people's sexual orientation or gender identity/gender history is not the only thing to monitor to check progress on LGB and trans equality. Other matters that can and should be monitored include:

- Progress against LGBT+ action plans
- Take up and outcomes of grievance and harassment procedures
- Content of and feedback from equality training
- Staff surveys
- Sickness absence
- Application/selection/recruitment/retention/redundancy
- Service user attitudes
- Information from exit interviews
- Take up of family benefits
- Language used in internal and external communications
- Internal and external image of the organisation.

## Negotiating and organising around monitoring

A move by employers to introduce LGBT+ monitoring can provide an excellent opportunity to negotiate improved policies and practices on the whole range of issues affecting LGBT+ workers. Check the UNISON bargaining factsheets for negotiating checklists.

It is also an opportunity to organise LGBT+ members, contacting them for their views. Put LGBT+ members in touch with regional and national LGBT+ activities and publications and sow the seeds for a branch LGBT+ group if there is not one already.

## Checklist for LGBT+ monitoring

The following should all be in place before LGBT+ monitoring is introduced:

- Well publicised policies on LGBT+ equality
- An action plan to implement the equality policies, with built in review mechanisms

- Clear explanation of the purpose of the monitoring, including how data will be interpreted and how it will be used to further equality
- An understanding of the differences between sexual orientation and gender identity and a clear rationale on whether monitoring one or both
- A robust strategy to guarantee the confidentiality of people's answers, including who will receive data – one central point – and how it will be processed, stored and reported
- The confidentiality strategy tested by mapping the flow of information from start to finish, to check there is no unnecessary access to data
- Questions about sexual orientation and gender history not simply added to pre-existing monitoring forms without careful planning
- Proper consultation with the workforce and the unions, including those most directly affected – LGB and trans workers
- Clear leadership from the top of the organisation, training for managers and briefings for staff.

## Explanation of trans terms

**Transgender or trans person:** a person whose internal sense of their own gender does not conform to the sex they were assigned at birth. Inclusive, umbrella terms, including people who describe themselves as transsexual, cross-dressing people, and people who have a more complex sense of their own gender than either 100% female or 100% male.

**Gender identity:** a person's internal sense of where they exist in relation to being a man, a woman, both, neither or otherwise.

**Gender expression:** how a person presents their gender identity.

## To find out more

- Visit our webpages [www.unison.org.uk/out](http://www.unison.org.uk/out)
- Ring UNISONdirect 0800 0857 857
- Write to Susan Mawhood, national officer - LGBT+ equality, UNISON Centre, 130 Euston Road, London NW1 2AY
- or email [out@unison.co.uk](mailto:out@unison.co.uk)

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