



Our response to the NHS Consultation

We did not respond to all consultation questions therefore numbering below will not reflect the questions as asked in the consultation document.

1. Health disparities

Consultation proposal

We propose adding the following sentence to the value 'Everyone counts' to provide further detail on how the NHS works to understand the needs of different people and reduce disparities:

NHS organisations work with statutory and non-statutory partners, using the best data available, to understand the range of healthcare needs within and between local communities and how to tailor services accordingly and fairly, reducing disparities in access, experience and outcomes for all.

Our response

The addition is insufficient.

SEEN In Health (SiH) is the national NHS staff network, formed to support staff in ensuring the protected characteristic of sex is reflected across policy, training and equality impact assessments. This NHS statement reinforces the role all community

organizations play in improving population health needs. However until the NHS commits to collecting accurate information, let alone about “Protected Characteristics” we will fail to deliver this key objective.

The conflation of sex and gender across services renders much available data ineffective. It is the experience of SiH members throughout the NHS that there’s a clear mandate for all organisations in receipt of public funds to undertake a ‘root and branch’ review of practice in this area to ensure that data-gathering on sex is clear. Only then can organisations understand their communities and how to plan and deliver services in a cost-effective way with prevention as a focus.

Health literacy is important both for staff and patients with varying literacy competencies. Patients may be confused or in pain, many having English as a second language. The use of ‘Plain English’ will improve comprehension, orientation and safety. NHS England is not using sex-based language in policy, training and other documents that would indicate these resources are being used internally. This is creating further problems for already marginalised minorities.

For example, asking “what gender are you” instead of “what sex are you” conflates two completely different populations with their own health needs whilst preventing accurate population profiling and research.

2. Patient responsibilities

Consultation proposal

The NHS belongs to all of us. There are things that we can all do for ourselves and for one another to help it work effectively, and to ensure resources are used responsibly. We propose strengthening this responsibility...We propose changing... to:

Please keep appointments or reschedule or cancel as soon as you know you will not be able to attend the appointment. Receiving treatment within the

maximum waiting times, as well as care to other patients, may be compromised unless you do. The NHS will communicate information about your appointment in a clear and timely way, including in alternative formats when this is appropriate and reasonable.

Our response

The amendment is insufficient.

SEEN In Health (SiH) believes that it is essential for patients to be active partners in their own health and wellbeing. We would strongly recommend the inclusion of an expectation that patients have a responsibility to disclose information about themselves which accurately reflects their health data, including their biological sex. Questions can include preferred beliefs if the patient wishes this to be known, as such intelligence will be of use across health and social care settings in the presence of consent to share.

The NHS needs to cut waste and get back to basics. Time taken via online, phone or paper triage is worthless when the person omits a factual statement of sex. Sex determines diagnosis and treatment possibilities.

Additional insight into any medical intervention to assist with a preferred gender identity will also inform diagnosis and treatment. This could significantly differ from those of the same sex.

The NHS should be respectful of anyone's belief or gender recognition certificate, but not knowing sex impacts our ability to adhere to the NHS Constitution. We cannot provide safe and effective care if patients do not inform us of a salient fundamental fact.

We recommend that sex markers must not be changed as part of a patient's responsibility to ensure that the NHS has access to the medical history required to deliver safe and effective care.

3. Research

Consultation proposal

To better support our aim to embed research in the NHS, we propose strengthening the existing pledge (“to inform you of research studies in which you may be eligible to participate”).

We propose adding an additional sentence to the pledge:

Health research and the offer to be part of research should be integrated into health and care across the NHS.

Our response

The addition is insufficient.

As the national NHS staff network that promotes the importance of the protected characteristic of sex we believe this is fundamental though again are underwhelmed by the proposed additional wording. The Cass Review highlighted too many examples of non-evidence-based activity being carried out under NHS branding.

We would recommend the wording is strengthened to include all new treatments must undergo rigorous assessment, research, and include robust follow-up procedures and audit. We would also recommend inclusion that healthcare research will ensure sex-based differences are incorporated for the benefit of all and to ensure that women’s healthcare is also prioritised in its own right.

Women are the predominant workforce in the NHS. Women are the only individuals to give birth. Women are the predominant caregivers to both young and old, voluntarily and in a paid capacity in our social care system. To support this country’s economy (health and wealth), women’s healthcare MUST be a research priority.

4. Leadership

Consultation proposal

The NHS Constitution and the Staff Handbook already include an extensive set of rights and pledges that are focused on ensuring staff have rewarding roles and feel supported in the workplace. These could be reinforced by reflecting the important role that leaders and senior managers can play in creating good workplace culture.

... it is proposed that we add the following wording near the beginning of 'Staff: your rights and NHS pledges to you':

Both the handbook to the NHS Constitution and the Staff handbook outline the rights and pledges that are central to creating a positive and supportive culture in the NHS workplace. Strong and effective leadership, management and governance of NHS organisations is central to the delivery of high-quality care, will support learning and innovation and promote an open and fair culture.

Our response

As the national NHS staff network (SEEN in Health) that promotes the importance of the protected characteristic of sex we propose that the "strong and effective leadership" model suppresses the ability of staff to raise well founded areas of genuine concern.

We would propose a listening and learning culture for management and governance where staff are not made afraid to challenge management direction. The culture should be open, fair and transparent.

The NHS needs to learn from the very recent scandals, for example the lack of evidenced based healthcare of the children at the Tavistock. These were top-down problems with anyone raising concerns dismissed or bullied into silence.

Currently there are 10 nurses in Durham seeking court action because they are forced to change in front of a man who has been told by management he can use their changing room. He is reported to engage female staff in conversation encouraging them to undress in front of him and wears clothing that exposes his genitals. The female staff's complaints were met with management instructions to "broaden their mindset" and that they needed "re-education".

Leadership in the NHS have failed in relation to issues of sex and the implementation of the protected characteristics of the Equality Act 2010. They have caved into fashionable dogma from lobby groups in place of sound legal advice. They have acted unlawfully in depriving services users of single sex services and accommodation. They have left the NHS open to legal challenges and industrial tribunals.

5. Sex and gender reassignment (1)

Consultation proposal

In the NHS Constitution, 'Access to health services' includes a right for patients to "receive care and treatment that is appropriate to you, meets your needs and reflects your preferences". Same-sex care is recognised through accompanying CQC statutory guidance to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014...

We propose adding a pledge to 'Access to health services' to state that:

"Patients can request intimate care be provided, where reasonably possible, by someone of the same biological sex."

Our response

As the national NHS staff network (SEEN in Health) that promotes the protected characteristic of sex we believe that this wording is not sufficient. "Where reasonably

possible” needs to be omitted to assure patients that they will not be touched intimately by a member of the opposite sex without their full knowledge and consent. Anything short of this and the NHS is enabling and facilitating sexual assault. Whether a patient or staff member claims a “gender identity” or possesses a GRC giving them the rights of someone of the opposite sex for some legal purposes is irrelevant.

If patients can't be reassured that the NHS takes their safety, privacy and dignity seriously then they may choose to self exclude. In the case of abuse survivors or observant women of faith they may consider self-exclusion preferable to the standards of care that the NHS has been offering.

We have been made aware of incidents where a female patient has been offered a chaperone to see a male clinician and a trans identified male has been appointed. It is entirely unacceptable that a woman should be put in a vulnerable position with not one but two males in attendance, frightened that if she speaks up she will be labelled a “bigot” and ejected from the hospital.

Patients who request same sex intimate healthcare should be treated non judgmentally, with respect and consideration. If a particular request cannot be granted the patient must be afforded a clear explanation and discussion of available options.

6. Sex and gender reassignment (2)

Consultation proposal

The NHS Constitution contains a pledge that states: "if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite sex, except where appropriate, in line with details set out in the handbook to the NHS Constitution."

This means that patients should not have to share sleeping accommodation with patients of the opposite sex and should also have access to segregated bathroom and toilet facilities. Patients should not have to pass through

opposite-sex areas to reach their own facilities. Women in mental health units should have access to women-only day spaces.

We propose adding additional wording to the pledge on sleeping accommodation to state: "if you are admitted to hospital, you will not have to share sleeping accommodation with patients of the opposite biological sex, except where appropriate. The Equality Act 2010 allows for the provision of single-sex or separate-sex services. It also allows for transgender persons with the protected characteristic of gender reassignment to be provided a different service - for example, a single room in a hospital - if it is a proportionate means of achieving a legitimate aim."

Our response

As the national NHS staff network (SEEN in Health) that promotes the importance of the protected characteristic sex, this wording is not acceptable. "Except where appropriate" needs to be omitted to assure patients that they will not be accommodated with a member of the opposite sex without their full knowledge and consent. Anything short of this and the NHS is enabling and facilitating sexual assault. Whether a patient or staff member claims a "gender identity" or possesses a GRC giving them the rights of someone of the opposite sex for some legal purposes is irrelevant.

The Women's Rights Network report into safety in hospitals uncovered more than 6500 rapes and sexual assault happening over a four-year period and this was without responses from 8 police forces. The NHS must do everything they can to address this horrifying statistic.

NHS guidance including the 2019 Document "Delivering Same Sex Accommodation" is legally wrong and root and branch clear out of all unlawful NHS policies and guidance needs to happen immediately, with retraining for staff on actual law and not the "Stonewall" version that has overwritten it without any legal basis.

In relation to the proposal to use "side rooms" it is unclear what constitutes a "trans identity", what the guidance on room allocation will be and whether this is a ward of the

patient's own sex. What is to happen to the patients needing extra privacy or end of life care who these rooms are intended for?

7. Sex and gender reassignment (3)

Consultation proposal

In the NHS Constitution, 'Access to health services' includes a right for patients to "receive care and treatment that is appropriate to you, meets your needs and reflects your preferences". Meeting the needs of patients includes respecting the biological differences between men and women, such as sex-specific illnesses and conditions.

We propose adding a right to 'Access to health services' to state that: "You have the right to expect that NHS services will reflect your preferences and meet your needs, including the differing biological needs of the sexes, providing single and separate-sex services where it is a proportionate means of achieving a legitimate aim."

Our response

The healthcare the NHS provides should not be reduced to the demands of what individuals/groups perceive is good treatment. Patient preference, whilst important, should not compromise the requirement of treatment and care to be anchored in quality evidence. Personally motivated decisions or charity influenced opinions should not be given equal weight to impartial evidence-based healthcare. The NHS should not outsource training and thinking to activist charities or patient groups.

Biological sex affects copious healthcare decisions. The NHS should not feign ignorance of facts to appear culturally kind. In truth it is negligent to wilfully ignore these realities.

The Equality Act 2010 and the Equality and Human Rights Commission support objecting to a member of the opposite sex in a single sex facility as reasonable.

The NHS should take care to ensure that any changes do not disadvantage one individual/group in an attempt to meet the needs of another to ensure that safe, compassionate and dignified care is not compromised in an attempt to achieve equality.

We propose

“You have the right to expect that NHS services will consider your preferences and endeavour to holistically meet your needs, without compromising the needs of other patients. This includes acknowledging that biological sex is often a legitimate consideration in the services, diagnosis and treatment the NHS can offer you as an individual and society as a whole. NHS organisations are likely to require the provision of single and separate-sex services where it is a proportionate means of achieving a legitimate aim.”

8. Technical changes to reflect the Equality Act 2010

Consultation proposal

The Equality Act 2010 establishes protection by references to the characteristic of sex as defined in the act. We therefore propose to change the language in the NHS Constitution from ‘gender’ to ‘sex’ to align with legislation where appropriate.

We propose changing the language from ‘gender’ to ‘sex’...

Our response

Words sometimes change meaning over time. However, this is through societal agreement which has not been obtained with the redefining of 'sex.' The conflation in definition has been duplicitous by some, with many (still) not understanding the negative impact this has (on women, in particular).

As the national NHS staff network (SEEN in Health) that promotes the protected characteristic of sex we reject attempts to amend the biological definition of sex and are pleased to note the proposed reversion to legislative language. This definition is necessary to enable us to fulfil our responsibilities as laid out elsewhere in the NHS Constitution.

9. Other areas

Consultation proposal

We know you come into contact with the NHS throughout your lives, and the rights and pledges within the NHS Constitution cover the breadth of experiences you have when you use NHS services. We're keen to hear whether you feel the NHS Constitution reflects the experiences you have and gives you the support you need in your care and your working lives.

We welcome comments on any further areas you believe we should consider, which can be best delivered through the NHS Constitution, and anything you feel should change in the current document.

Our response

Section 3 of the Constitution states that:

“Respect, dignity, compassion and care should be at the core of how patients and staff are treated not only because that is the right thing to do but because patient safety, experience and outcomes are all improved when staff are valued, empowered and supported.”

SEEN in Health believes that achieving this dignity depends on an open commitment to respecting and balancing the rights of everyone.

Ostentatious displays of ‘allyship’ for certain groups while others go unremarked create the impression that there is a hierarchy of rights, with some protected characteristics afforded greater consideration than others.

This results in the politicisation of the workplace, with staff put under pressure, both officially and unofficially, to participate.

Our staff overwhelmingly are dedicated and diligent professionals, and our patients should feel confident that they will be cared for with respect and dignity, regardless of who they are.

Tokens such as rainbow lanyards, prominent flag displays and pronoun badges might seem innocuous, but they contribute to a workplace environment where those staff and patients who know that it is not possible to change sex and do not believe that the highly contested concept of ‘gender identity’ is more important than biological sex are made to feel excluded, unvalued and intimidated.

As a national staff network we aim to support NHS leaders in all four nations address the divisive and exclusive cultures that exist in our organisations.

Submitted on behalf of SEEN in Health, 25 June 2024.