



Annex A: SEEN in Health's (SiH) perspective on NHS England's equality objectives

The use and replication of correct terminology for the protected characteristics listed in the Equality Act 2010 (EA10) is key to ensuring broad understanding of this legislation and reducing the potential for discrimination. We believe that NHS England's policy documentation does not do so, and as a staff network, we would ask that NHS England ensure that it remains in step with the legislation and EA10 language.

1. Equality objective 2: To improve the capability of NHS England to understand and address the PSED's legal obligations and the interface with the separate health inequalities duties.

Target 1: To improve the capability of NHS England's teams to understand and address the PSED's legal obligations.

1.1 Sharing of guidance, as detailed in the report, is insufficient as it does not evidence implementation. Leadership is required to ensure NHS England can demonstrate that it is meeting its responsibilities with regard to the Public Sector Equality Duties (PSED).

1.2 This same report indicates the Health Information Literacy Toolkit has been shared. Health literacy is important both for staff, with varying literacy competencies, and the public. English may be a second language, and/or where societal terms are considered offensive, use of 'Plain English' will improve comprehension, orientation

and safety. NHS England is not using sex-based language in policy, training or other documents that would indicate these resources are being used internally. NHS employers look to NHS England to lead by example.

1.3 Our SEEN in Health network members have informed us of the approaches they have made to NHS England managers and regional/national directors, highlighting the discrimination within the EDI mandatory training and missed opportunities to foster good relations between those with different protected characteristics. To date, NHS England is yet to amend this training. To pass the training course requires NHS England employees to incorrectly answer a question regarding access to single sex toilets. This needs to be corrected to reflect the Equality Act.

1.4 We recognise NHS leaders may find it challenging when applying the principle of 'proportionality' to accessing single sex spaces and, as a national staff network, we are available to support NHS England to do so.

1.5 NHS England is routinely failing to collect data on sex, by conflating the terms sex and gender. In doing so, NHS England cannot demonstrate capabilities to understand or address the PSED's legal obligations. This includes any data NHS England gathers from systems and Trusts, and we are concerned by mandatory questions on surveys which require all staff members to declare their gender. Sex and gender are not interchangeable terms. We ask NHS England to undertake an organisational-wide data collection review to ensure that where sex-based data is sought then this is made explicit. We believe that a requirement for staff to declare gender (and not sex) directly discriminates. Such an approach does not preclude NHS England from also collecting data on preferred gender, which would provide useful PSED evidence on fostering good relations between those with different protected characteristics.

2. Equality objective 3: To improve the mapping, quality and extent of equality information to better facilitate compliance with the PSED in relation to patients and NHS service-users of all ages, NHS service delivery, and the NHS workforce.

Target 1: To work with the Department of Health and Social Care (DHSC), Office for National Statistics (ONS), NHS arm's length bodies, and other government

bodies to identify how best to carry forward and oversee the work of the Unified Information Standard for Protected Characteristics (UISPC) Project [2023/24].

2.1 Our members are unable to fulfil their clinical duties and commit to the principle of 'do no harm' due to poor equality information. An individual is permitted to change their sex marker on their medical records. This has adverse impacts upon those who are provided with a second NHS number as their previous records are not accessible. Given the ongoing provision of hybrid approaches to appointment type (virtual, including telephone appointment) we are increasingly reliant upon accurate accessible information about patients. Inaccurate recording of biological sex has led to all men being asked if they could be pregnant prior to radiological examination. Many may be elderly, confused, with English as a second language and be in pain.

2.2 Our members have also raised incidents of patient hostility and aggression as a result of factual misinformation on records.

3. Equality objective 4: To improve, by reference to protected characteristics, the recruitment, retention, progression, development, and experience of the people employed by NHS England to enable the organisation to become an inclusive employer of choice.

3.1 NHS England requires staff to state their gender, not sex, when applying for roles. With the known disproportional representation of men in more senior roles, we would expect a greater focus on sex as a protected characteristic during the recruitment process.

3.2 Inclusivity should include all employees. The necessity for a Sex Equality and Equity Network (SEEN) stresses that many of us believe that current practices within the NHS neglect legal requirements in relation to the protected characteristic of sex. Dr Hilary Cass explores this division and we would encourage NHS England to consult the national SiH Network over its plans to implement the Cass Review recommendations.

3.3 We offer our support in the organisational change approach recommended for 2024/5 to assist NHS England in its ambitions to become an employer of choice and to demonstrate commitment to its values.

4. Equality objective 5: To improve access and reduce communication barriers experienced by individuals and groups of people of all ages, by reference to protected characteristics, who need NHS services...

Target 4: Through the evaluation of the equity and equality guidance for local maternity systems and the implementation of Local Maternity and Neonatal Systems' equity and equality action plans, in furtherance of pledge 4, NHS England will measure progress in relation to reducing inequalities in perinatal mortality rates for babies from Black, Asian and mixed ethnic groups and identify how good practice can best be shared and spread.

4.1 Whilst we have referenced a requirement for NHS England to improve its communications through use of sex-based language above we additionally highlight concerns that Professional Bodies are enforcing language such as 'birthing person'. Whilst this term is offensive to many women it is also confusing as it could also reference a doula. We would encourage NHS England to engage with Professional Bodies to prevent the removal of sex-based language in relation to women (the removal of references to 'men' in relation to sex-specific health matters have not come to our attention). Additionally, due to legislation, we would expect all NHS England contracts to reference a requirement of equal respect for all protected characteristics, including sex, and the expectation of sex-based language to reflect this.

4.2 We applaud the use of the word 'woman' in pledge 4 though note that our need to applaud a sex-based word demonstrates why SiH exists. It is vital that the NHS targets the equitable intersectional needs of black, Asian and mixed ethnic women, and of women living in the most deprived areas, in maternity services.

5. Equality objective 6: To improve, by reference to protected characteristics, the recruitment, retention, progression, development and experience of staff in the NHS workforce.

Target 1: To publish and implement the high impact actions (and their associated success metrics) included in the national NHS Equality, Diversity and Inclusion (EDI) improvement plan, seeking by 2024/25 to develop improvement trajectories for this programme.

5.1 It is only possible to measure improvement by reference to protected characteristic. The NHS equality, diversity, and inclusion improvement plan ‘acknowledges that some definitions and terminology in legislation do not always reflect the identities or lived experience of individuals’ and ‘requires identification of barriers and biases, and targeted action to overcome specific inequalities, discrimination and marginalisation experienced by certain groups and individuals.’

5.2 We anticipate our communication today showcases the barriers that are impacting on the NHS workforce. As a national staff network we would like to work with NHS England to identify and put in place targeted action to overcome sex inequalities. Too many of us have felt unable to speak openly within our work groups as a result of the dominance of other protected characteristics when considering equality impact assessments. Our members have protected characteristics in addition to the characteristic of sex, including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion/belief, and sexual orientation and we would expect them all to be reflected in policy guidance.

5.3 As a national staff network we intend to support the growth of local SiH staff networks. These networks will help organisations deliver on the six high impact actions to address the intersectional impacts of discrimination and bias.

6. Equality objective 8: To ensure that the equality objectives for NHS England address the relevant statutory functions, duties, powers and responsibilities of NHS England created by the Health and Care Act 2022. [2023/24 and 2024/25].

6.1 As the Chair of a new organisation you have an opportunity to reset the landscape, creating a truly inclusive NHS. As the Chairs of a new national staff network, we are here to assist you.

Our objectives are:

- To support staff and organisations to fulfil and adhere to the NHS values and guidelines as set out in the NHS Constitution.
- To support organisations to meet the requirements under the public sector equality duty.

- To ensure all resources used in the NHS comply with the Equality Act 2010, specifically in relation to the protected characteristic of sex.
- To be included as a resource for consultation, advice and input of views for national NHS bodies when they are formulating internal plans and policies alongside other staff networks.
- To facilitate creation of local NHS SEEN Staff networks to work with existing networks.
- To support staff to challenge discrimination at work and enable them to feel safe to exercise their legal rights under the European Convention of Human Rights to freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association, provided they manifest their rights lawfully and respectfully, and in line with the NHS constitution.

6.2 We are an NHS staff network, here to support NHS employees and assist organisations in meeting their obligations under the Equality Act in relation to the protected characteristic of sex. We share, with you, the responsibilities detailed on objective 8. We must return to the practice of communicating respectfully with people who use health and care services and their carers in an open, accurate, effective, straightforward and confidential way in relation to the protected characteristic of sex.