

Mermaids' Consultation

Response:

NHS Constitution Consultation

June (2024)

Intimate Care

There is a proposal to add 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."

To what extent do you agree or disagree with this proposal?

If you have any further views on the proposal, please provide these in up to 250 words, if possible.

We disagree with this proposal.

- The DHSC has not provided a definition of 'biological sex', and there is also no explanation as to how the 'biological sex' of NHS staff will be monitored or verified by a patient. For example, it is unclear if biological sex means the sex a person was assigned at birth, their legal sex, the sex they present as, or something else.
- According to [BMA guidance](#) a patient does not have a right to know if a healthcare worker has a gender different to the sex they were assigned at birth. We support this approach - it would be intrusive and inappropriate for a healthcare worker to be compelled to disclose their sex assigned at birth which is irrelevant to their current working and day to day lives. It is not possible for a professional's sex assigned at birth to be determined by their presentation, and in some instances a healthcare professional may not physically present in a way that could be assumed to be any gender/sex, such as non-binary workers.
- If a patient were to request a healthcare worker of a particular sex assigned at birth, the necessary and mandatory outing of a trans healthcare worker who is presenting as a particular sex may not be compatible with the protected characteristic of gender reassignment under the Equality Act 2010. Similarly, for staff with a Gender Recognition Certificate it is illegal under the Gender Recognition Act for public bodies to disclose someone's transgender status without their consent.
- The fear of being outed at work because of the implementation of the constitution will deter many trans young people from entering healthcare professions.

Single Sex Hospital Accommodation

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."

There is a proposal to add the following wording:

“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.”

To what extent do you agree or disagree with this proposal?

If you have any further views on the proposal, please provide these in up to 250 words, if possible.

We disagree with this proposal.

- No definition of ‘opposite biological sex’, or ‘women only-space’ is provided which makes it impossible to respond to this proposal in an informed way. As stated in the consultation introduction, ‘any changes [to the constitution] should be clear and compelling’, however it is unclear how NHS staff should interpret ‘biological sex’ in the context of sleeping accommodation.
- The proposed change is explained in relation to ensuring the ‘privacy, dignity and safety of all patients’. However, no evidence has been provided, or exists, to show that trans people on single-sex wards are the cause of any issues around the privacy, dignity or safety of other patients. The Review states that there should be ‘a sufficiently good reason for limiting or modifying a transgender person’s access’ to a single sex space but fails to provide such a reason.
- Given existing capacity and provision of side or single rooms, requiring trans patients to use them may not represent the best use of these spaces. Where trans people would prefer single accommodation, we think hospitals should endeavour to make that possible. However, the blanket policy of allocating trans people to side/single rooms could negatively impact their care if for example, no side rooms are available or if it reduces health professional access to the patient.
- Non-binary and intersex people are not mentioned in the Review. The needs of both non-binary and intersex patients must be considered before any changes to accommodation policies are made.

Meeting Patient’s Biological Needs

There is a proposal to add:

“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.”

To what extent do you agree or disagree with this proposal?

If you have any further views on the proposal, please provide these in up to 250 words, if possible.

We disagree with this proposal.

- The assertion that NHS services will reflect trans people’s preferences and meet their needs is welcome. Currently, trans people routinely find healthcare professionals unable or unwilling to meet their needs or respect their preferences:
 - [The National LGBT Survey 2018](#) found that just 1 in 5 trans respondents had reported that their specific needs had been ignored or not taken into account.

- We support the use of additive language in healthcare to ensure that trans young people feel safe in accessing vital healthcare (for example ‘women and people with a cervix’). Trans people may feel unable to access care if they are likely to be referred to with inappropriately gendered language.
 - For example, 30% of trans and non-binary people reported that they did not access maternity care (NHS or private care) during pregnancy and 50% of trans masculine people said gender identity was a reason they did not attend a cervical cancer screening.
- This has an impact on healthcare outcomes - the GP Patient Survey found that younger trans and non-binary patients (aged 16 to 44) were more likely to report a long-term condition, disability (including physical mobility) or illness compared with other patients of the same age.
- We support the use of inclusive language when speaking directly with individual trans patients and additive language with referring to groups of patients in health promotion materials, in information leaflets, on forms, and by clinicians as this plays an important part in reducing trans people’s barriers to care.
- Young trans people at Mermaids report they would often not access healthcare where they are not confident they will be referred to with inclusive language.

Technical changes to reflect the Equality Act

The current NHS Constitution refers to “gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status”.

In order to bring the language into line with that used in the Equality Act 2010, the proposal is to change the wording to:

“sex, race, disability, age, sexual orientation, religion or belief, gender reassignment, pregnancy and maternity or marriage and civil partnership status”.

To what extent do you agree or disagree with this proposal?

If you have any further views on the proposal, please provide these in up to 250 words, if possible.

We agree with this proposal.

When you respond, you could raise some of the following points:

This change reflects the language of the Equality Act 2010 – it’s important that the NHS Constitution accurately reflects the law.

The changes proposed in the ‘Sex and Gender Reassignment’ section of the consultation act in opposition to this assertion of patients’ rights not to be discriminated against on the basis of gender reassignment.