

## Written evidence submitted by A Member of the Public [GRA2018]

*I would like to remain anonymous due to the difficult atmosphere surrounding the discussion on the conflict between women's rights and trans people's rights in certain circumstances and situations. I am aware of a number of people who have lost work or their jobs as a result of this debate and I do not want my employer or my professional regulator to be contacted in an attempt to harass and worry me and portray me incorrectly, as someone who is not able to fully care for all my patients. I have always and will always, do my utmost to care and advocate for transgender patients, as I do so for all the patients that I have responsibility for.*

I am submitting this piece as evidence regarding your question '**Are the provisions in the Equality Act for the provision of single-sex and separate-sex spaces and facilities in some circumstances clear and useable for service providers and service users? If not, is reform or further guidance needed?**'

I am a Registered General Nurse (RGN) with 20yrs experience of working primarily on medical wards in a large general hospital. It is my experience that the provisions in the Equality Act 2010 for the provision of single sex and separate sex facilities whilst clear to those with an excellent knowledge of the EA2010, are not as clear and protected as they need to be for patients in hospital. It is evident to me that many trans-inclusion hospital policies are leading to the discrimination of patients with the protected characteristics of sex, disability and possibly religion or belief and that they are also causing issues for nursing staff who are trying to do their best for all patients and work within their NMC Code of Conduct. I think that further clarification and guidance is needed to enable NHS service providers to be able to recognise the needs of all patients with a protected characteristic and provide the most appropriate accommodation and care for all patients, within a framework of consent. In this submission I will discuss:

- Patients needs for privacy, dignity and safety and their desire for single sex wards.
- NHS England and Improvements policy which is misstating the EA2010 legislation around the need for case-by case discrimination.
- Also NHS trust policies which are not interpreting the Equality Act 2010 correctly and which are therefore placing the needs of some patients above the needs of other patients resulting in discrimination against females and those with disabilities.
- The situation for nurses whose Code of Conducts requires them to protect the vulnerable, seek consent, uphold the rights of and advocate for all patients and who are as a result of unclear guidance finding it more difficult to deal with certain situations and conflicts of rights and needs as they arise.
- Situations where poor guidance has caused issues.
- Suggestions for ways forward which could include more appropriate and fully -informed impact assessments of trans-inclusion policies impact on all those with a protected characteristic alongside guidance and training to NHS staff about how to make fully-informed and caring decisions regarding the accommodation of transgender patients, which respects all patients confidentiality and right to informed consent.

### **1. The importance of single sex wards.**

1.1 General hospital wards are, as we all know, often deeply uncomfortable places to be in. It is for many people the only time(s) in their life that they will be sleeping, changing, washing, receiving some medical examinations and treatment and perhaps toileting next to complete strangers, usually less than 2 metres away. The provision of a curtain can only

do so much towards making patients feel as though they can maintain their privacy and dignity and does nothing to help patients feel more secure. It was for these and other related reasons that the policy to eliminate mixed sex accommodation was almost universally popular with patients and public. It is certainly my experience, as someone who was nursing before the NHS commitment to eliminating mixed sex accommodation, that the vast majority of patients prefer same sex hospital accommodation.

## 2. The NHS England and NHS Improvements Policy

2.1 The care of transgender patients on NHS hospitals wards is primarily informed by Annex B of the NHS England and NHS improvement document 'Delivering same sex accommodation, Annex B'. This is the latest version ([link](#)). The guidance was very similar in previous versions of the document.

2.2 The Delivering Same-Sex Accommodation guidance starts by stating that '*All providers of NHS-funded care are expected to prioritise the safety, privacy and dignity of all patients*' and indeed that '*Every patient has the right to receive high quality care that is safe and effective and respects their privacy and dignity*'. Annex B states that '*Trans people should be accommodated according to their presentation: the way they dress, and the name and pronouns they currently use.*' And further states that '*Those who have undergone transition should be accommodated according to their gender presentation. Different genital or breast sex appearance is not a bar to this, since sufficient privacy can usually be ensured through the use of curtains or by accommodation in a single side room adjacent to a gender appropriate ward. This approach may be varied under special circumstances where, for instance, the treatment is sex-specific and necessitates a trans person being placed in an otherwise opposite gender ward. Such departures should be proportionate to achieving a 'legitimate aim', for instance, a safe nursing environment.*' And also '*Non-binary individuals, who do not identify as being male or female, should also be asked discreetly about their preferences, and allocated to the male or female ward according to their choice.*' It is clear from the reading the entirety of Annex B that this guidance suggests that placement onto a male or female ward should be as a result of either inference from gender presentation - clothing and hair styles etc or name and pronouns, or from self-identification and that it should be in line with the trans patient's choice. It is also suggested that that a patient may request a male or female ward regardless of where they are in their transition, in line with their continuous gender presentation.

2.3 Within Annex B there is no discussion of what hospital staff should do about the issues of other patients' needs or rights, however the answer to question 18 in Annex C does give some indication that other patients within the same hospital bay may have needs or rights (wishes) that also need to be accommodated and it does state that there are some circumstances where it is lawful to '*exclude a trans person from a single sex ward of their preferred gender but only if this is a proportionate means of achieving a legitimate aim. Any decision to do this must therefore be made on a case-by-case basis, and based on:*

- *an objective and evidence-based assessment of the circumstances and relevant information*
- *respecting the rights and needs of the trans person and the detriment to them if they are denied access and balancing that against the needs of other service users and any detriment to them if the trans person is admitted.*'

However there is no guidance given about how staff can achieve this proportionate means of achieving a legitimate aim, especially as it suggests that this needs to be done on a

## Written evidence submitted by A Member of the Public [GRA2018]

case-by-case basis, despite this not actually being part of the Equality Act 2010 legislation. How are staff supposed to assess on a case-by-case basis that 'yes this trans patient can be accommodated with these other opposite sex patients, who might reasonably object but who also might not, however we won't know until we have tried it and even if they do object, well we cannot confirm to them the incoming or new patient's sex or transgender status anyway'. Alternatively 'No we can't accommodate this trans patient with opposite sex patients because we have assessed and we think the other patients may reasonably object or that there is something specific about this trans patient that makes it unreasonable'. Neither situation is acceptable as assessing on a case-by-case basis is likely to be unkind and unfair to all patients, including trans patients.

2.4 There is also no consideration of the equality impact contained within this NHS guidance on those with a different protected characteristics such as sex or disability. For example, many females may reasonably object to sharing a hospital bay, for reasons of bodily privacy and dignity with someone who they recognise to be male. Equally many hospital patients may be unable to express their discomfort or distress about sleeping and toileting next to someone of the opposite sex due either to their disability or due perhaps to a temporary incapacity. Females and those with disabilities are also more likely to have been subjected to male violence and sexual assault and to feel unsafe and experience trauma responses and distress when in certain situations with males. The NHS is supposed to becoming more trauma-informed, especially for females and yet there is no acknowledgement within the guidance of the need that many women have for spaces away from males as a result of trauma and the associated fear of repeat attacks when in vulnerable situations with any male. Females and those with disabilities and perhaps those with certain religious needs are likely to be disproportionately impacted by the guidance contained within Annex B.

### 3. Policies and Guidance from some NHS trusts.

3.1 This lack of distinct guidance appears to have lead NHS trusts to come up with their own policies and guidance, many of which result in further discrimination against women and girls and those with disabilities.

3.2 This guidance linked to from the trust's policy on trans inclusion <https://www.wsh.nhs.uk/CMS-Documents/Trust-policies/351-400/PP-18-355a-Supporting-people-who-are-trans-FAQ.pdf> from West Suffolk NHS foundation trust states that '*If a patient who is trans wants to be in a single sexed environment of the gender they identify with this right supersedes objections raised by other patients, their relatives or carers.*' The guidance also makes clear that asking if the asking if the patient 'is a man or a woman' is considered to inappropriate and transphobic and that any patients or family asking this should be challenged. Additionally staff are reminded that they cannot reveal a patient's or other staff member's transgender status. Some provision is made for female patient with a history of historical abuse, who maybe triggered by being on a ward with a patient they '*perceive to be male*' where this might lead to a worsening of their health and wellbeing, however the guidance states that if staff are satisfied that this particular patients objections are legitimate and non-discriminatory then before any action is taken they should '*should seek the view of the trans service user if they are aware of the objection*'. This guidance is clearly discriminatory as firstly it does not protect the privacy and dignity of the female patient and her right to decline to share an intimate space with a person who is of the opposite sex or indeed to decline an intimate examination from a clinician of the opposite sex. It also denies her the knowledge around which to give or decline consent and names as transphobic the seeking of the knowledge required. Furthermore the guidance does not

take into account the disproportionate ratio of women who have experienced male violence or sexual assault or who fear doing so, meaning that it is females who will be disproportionately impacted by this policy. This guidance also offers the female patient no confidentiality regarding her own life experiences, unless she chooses to stay silent and deal privately with her distress or self-discharge from the hospital. This guidance also offers no protection for those who are disabled, or temporarily incapacitated by their ill-health, and who are unable to speak up as a result of their condition. It also results in the female patient being judged by health care staff, who are placed in the position of deciding whether or not her reasons for wanting single sex accommodation are discriminatory or not.

3.3 In the NHS trust policies such as this one <https://doclibrary-rcht.ornwall.nhs.uk/DocumentsLibrary/RoyalCornwallHospitalsTrust/HumanResources/PolicyForSupportingIndividualsWhoAreTransgender.pdf> by the Royal Cornwall's NHS Trust, it is clear that the Equality Impact Assessment has not taken into account that there might be a negative impact of the policy on those with other protected characteristics such as sex and disability.

#### **4. How these policies conflict with the Nursing (NMC) Code of Conduct**

4.1 All nurses act in accordance with their Code of Conduct and must uphold the rights and dignity of all the patients in their care, whilst I would not wish to subject you to the entirety of the Nursing and Midwifery Council Code of Conduct by which all registered nurses must abide I would just like to highlight the following sections and points which state that we must:

##### *Prioritise People*

*You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.*

To achieve this we must, amongst other things:

*1.5 respect and uphold people's human rights*

*3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care.*

4.2 Taking into account these points and indeed all the parts of my code of conduct and of course my own compassion for all patients in my care and my many years of experience of balancing the needs and rights of patients leads me to my considerable concern that Annex B and many of the hospital policies that have arisen from it are not fit for purpose. I believe that these policies prevent nurses and other health care professionals from using their own fair judgment and experience to balance patient needs appropriately, as the policies as they stand are weighted very heavily in favour of one group of patients' rights superseding all others.

4.3 As a nurse I want, should and always have done my best to ensure that transgender patients I encounter are cared for with compassion, professionalism and without

## Written evidence submitted by A Member of the Public [GRA2018]

discrimination. I must advocate and care for them when they are vulnerable, and uphold their dignity and their rights, including their right of confidentiality. but I must also do this for all patients, for example I must uphold the rights and dignity of female patients and also ensure that they are not discriminated against and I must advocate for all patients who are vulnerable, especially those who are unable to advocate for themselves.

4.4 I know of actual situations whereby nurses have received verbal aggression, harassment and threats of legal action as a result of patients who have perceived that the wrong decision has been made regarding their placement within the hospital.

### **5. Ways Forward**

I would suggest that consulting with interested parties including groups advocating for the rights of women and people with disabilities is important. I would suggest that legal clarification is robustly sought and then the production of more appropriate and fully - informed impact assessments of trans-inclusion policies taking into account all protected characteristics. I would also suggest that clear guidance and training to NHS staff about how to make fully-informed, trauma-informed and caring decisions regarding the accommodation of transgender patients, which respects all patients' confidentiality and the right to be able to give informed consent and which ensures that they are advocated for when they are vulnerable.

[https://improvement.nhs.uk/documents/6005/Delivering\\_same\\_sex\\_accommodation\\_sep2019.pdf](https://improvement.nhs.uk/documents/6005/Delivering_same_sex_accommodation_sep2019.pdf)

<https://www.wsh.nhs.uk/CMS-Documents/Trust-policies/351-400/PP-18-355a-Supporting-people-who-are-trans-FAQ.pdf>

<https://doclibrary-rcht.ornwall.nhs.uk/DocumentsLibrary/RoyalCornwallHospitalsTrust/HumanResources/PolicyForSupportingIndividualsWhoAreTransgender.pdf>

**November 2020**