

## Equality Impact Assessment for Guidance Review and Update

<b>Title of work:</b> Review of “Supporting Transgender and Non-Binary People in the Workplace” protocol and guidance	<b>Date of completion:</b> 3/10/24	<b>Completed by:</b> OW, Health Improvement Specialist
<b>Description of work:</b> <p>This review of existing document ‘Supporting Transgender and Non-Binary Staff in the Workplace’ Protocol and Guidance is to assess where updates to guidance, language, employment practices or facilities are required, in line with legislation. This is to ensure the protocol and guidance document is relevant to evolving and updated case law, codes of practice and Once For Scotland policies, and to inform managers and employees of the rights of transgender and non-binary employees.</p>		
<b>Outcome of work:</b> <p>This is a review of existing guidance for NHS staff to support transgender and non-binary colleagues. The intended outcome is to produce an updated guidance document to support NHS staff and managers in the workplace when an employee proposes to undergo, undergoes or has undergone a gender reassignment process. The guidance will inform staff of relevant legislation and rights relating to equality law and reflect relevant case law.</p>		
<b>Who will be impacted:</b> <b>Transgender and non-binary staff</b> This work will have a substantial positive impact on trans and non-binary employees with the protected characteristic of gender reassignment, and their managers. There may be a substantial indirect positive impact on colleagues of trans employees who will benefit from more choice of how to access toilets and increasing the dignity and privacy measures of changing facilities in NHS premises. Should this change lead to an increase in the trans workforce population at NHS Highland, there will be indirect benefits to trans patients within NHS Highland who will be better represented by the workforce delivering their care.		

**How do you know:**

A subject matter expert was hired to make an assessment to support the review and update to existing guidance. A review of available existing evidence base was conducted with the support of UHI literature search service, in conjunction with a review of other NHS board policies available publicly across Scotland, with some consideration of NHS England, business and other policies to establish key themes and elements of best practice.

A working group consulted with key equalities stakeholders in LGBT and women's rights organisations to better evaluate the impacts of this guidance. NHS Highland would like to extend thanks to Scottish Trans, The Proud Trust and Engender for their contributions to this work, and volunteers who offered their time to make contributions.

An internal survey was circulated to gather feedback from managers and staff who engage with the guidance, both during rounds of governance and later with all staff, to understand views on the guidance during the review process and better understand perceptions of impact.

**Data about people affected:**

NHS Highland publishes workforce data, but this does not include a breakdown of the number of staff employed who identified as transgender, but a percentage of staff. More widely, 19,900 people identified as transgender in Scotland in the latest census in 2022. The second largest number of trans people in [census data](#) were in the age category 16-19, which has informed our considerations of UNCRC in relation to this guidance review and impact assessment<sup>1</sup>.

NHS Highland's HR system, eESS, allows members of staff to amend their personal details, including equalities information. However it does only have binary gender options to staff members. The equality monitoring data gives some insight, with limitations, to better understand the transgender and non-binary workforce. eESS contains the question:

“Have you, are you or do you plan to undergo gender reassignment (changing gender)?”

Members of staff had the option to respond “Yes”, “No”, “Don't know (not declared)” or “Prefer not to say”.

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<sup>1</sup> <https://www.scotlandscensus.gov.uk/2022-results/scotland-s-census-2022-sexual-orientation-and-trans-status-or-history/>

The language of eESS is, in the context of trans individuals, out of date, and misrepresents the process of transition as a chiefly medical exercise. Because of this and to align with the Census and the advice of the Scottish Government and LGBTQ+ organisations, the question is being amended to ask -

“Do you consider yourself to be trans or have a trans history?”

The answer options for this question are: “Yes”, “No”, “Prefer not to say” with an additional question – “If yes, please describe your trans status, for example, non-binary, trans man, trans woman”.

There has been a reduction in the number of staff who choose “prefer not to say” or “don’t know/not declared” over the last 3 years, in conjunction with an increase in the number of staff members identifying as transgender. The figures have been rounded up/down due to low numbers so showing as 0.1% for each of the years. We anticipate this will further change when eESS is updated to ask about transgender identity in a more appropriate and respectful way.

Workforce equality monitoring data shows an increasing proportion of transgender employees in the workforce since 2017. Data from the Mainstreaming Equality report 2021 shows figures from 2017-2021:

[NHS Highland Equality Outcomes and Mainstreaming Report 2021-2025 \(scot.nhs.uk\)](https://www.scot.nhs.uk/nhs.uk/highland/equality-outcomes-and-mainstreaming-report-2021-2025)

<b>Transgender</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Declined</b>	35.35%	35.55%	35.77%	23.48%
<b>Don` t Know</b>	9.55%	8.71%	8.01%	19.76%
<b>No</b>	55.02%	55.66%	56.13%	56.67%
<b>Yes</b>	0.07%	0.08%	0.08%	0.10%

Recent data shows the percentage of trans employees remains stable from 2021-2023.

NHS Highland	2021	2022	2023
<b>Transgender</b>	% of Workforce	% of Workforce	% of Workforce
Yes	0.1%	0.1%	0.1%
No	60.2%	63.4%	66.4%
Prefer not to say	21.8%	19.5%	17.8%
Not declared	17.9%	17.0%	15.7%

Although transgender employees are a minority in the NHS Highland workforce, as identified below, indirect benefits of updating guidance extend to wider workforce groups.

The Equality Network report '[Further Out](#)' details specific experiences of LGBT people in rural regions of Scotland and has been considered useful context relating to transgender staff members and NHS Highland as a place where the workforce feel safe and supported at work. The report outlines recommendations for local authorities and public sector bodies to incorporate inclusive training, which has been considered with this guidance review in conjunction with the staff consultation. The consultation identified training and awareness as the most frequent topic of discussion during consultation.

A peer-led focus group was held for trans and non-binary staff to discuss the updated guidance and their experiences of NHS Highland as an employer. 3 staff members attended, and the updated guidance was received positively.

### **Fairer Scotland Duty Assessment:**

When giving due regard to the Fairer Scotland Duty, this impact assessment recognises the increasing prevalence of in-work poverty. The Fairer Scotland Duty requires NHS Highland to consider the socioeconomic impact of strategic decisions<sup>2</sup>.

Regarding in-work poverty, the relative poverty rate of working age adults in 2020-23 was estimated to be 21% after housing costs, and 18% before housing costs, according to the latest figures from Scottish Government. In 2020-23, 60% of working-age adults (430,000 working-age adults each year) in relative poverty after housing costs were living in a household where someone was in paid work.

Source: [Poverty and Income Inequality in Scotland 2020-23 \(data.gov.scot\)](#)

<sup>2</sup>[Fairer Scotland Duty: guidance for public bodies - gov.scot \(www.gov.scot\)](#)

It's also understood that people with the protected characteristic of gender reassignment may be more at risk of poverty than their counterparts, although a lack of data makes this difficult to fully understand. The last National LGBT Survey conducted in 2018 found that 60% of trans people earned less than £20,000 per year.

[It's a fundamental issue of social justice': Gendered Intelligence on low pay, precarity and good work for trans people | Living Wage FoundationGender](#) [accessed 7.8.24]

Regarding any potential changes to toilet facilities, the UK government consultation outcome of '[Toilet provision for men and women: call for evidence - analysis of responses received](#)' updated in August 2023 was used to help inform approaches to reviewing current toilet provisions.

### **Staff Consultation:**

The draft revised guidance was circulated for comment in Local Partnership Forums, Argyll and Bute Joint Partnership Forum, Medical and Dental Bargaining Group, HR and Equality and Diversity Oversight groups. An all-staff consultation was held with promotion to provide feedback in all staff emails, on posters in buildings, and engagement events held online for staff to ask questions and hear about the review. Verbal and written feedback received throughout the consultation and governance process was incorporated into the guidance or addressed as needed. 11 written responses were received for the consultation survey, and thematic analysis of results showed sensitivities around fear of conflict between protected characteristics, with particular interest in managing roles with Genuine Occupational Requirement to be female.

A small focus group was held for transgender and non-binary staff to better understand their experience of the guidance in practice, with 3 staff members in attendance. Feedback was positive on the proposed draft guidance, in particular around an individualised approach and information about privacy and confidentiality. Participants reported a general experience of a supportive working environment for trans employees, where people have an intention to be supportive, but don't necessarily have the skills, knowledge or awareness to support trans colleagues effectively, and that draft guidance would have a positive impact.

## **What will the impact of this work be?**

**This work will have a positive direct impact on people with the protected characteristic of gender reassignment.**

The aim of this guidance is to improve the confidence of managers of transgender and non-binary staff, as well as making NHS highland a safe and supportive place for a workplace transition. There will be a positive impact for staff with the protected characteristic of gender reassignment, who will be better supported by managers who are well informed of relevant best practice and legislation, as well as being aware of their rights in the workplace and how NHS Highland can support them through a workplace transition.

### **Toilets**

With regard to redesignation of toilet facilities, the importance of single sex spaces is well recognised in conjunction with the rights of all people to access toilets without stress or fear of harm. The approach established to protect and balance the rights of people with protected characteristics of sex, disability, religion and gender reassignment was to review facilities to provide access to male, female and gender neutral/all gender toilets as far as possible, to give everyone choice in how they access facilities safely and in the way most appropriate to them. There is an identified challenge when considering these characteristics in conjunction with NHS Highland's smaller premises, which may not physically have many toilets. Given the high proportion of female workforce in NHS Highland, it may be of potential benefit to women to have more toileting options in the form of both gender neutral and female single sex toilets.

### **Impact on characteristics of disability & sex**

There may be an indirect positive impact to some staff members with disabilities, as adding additional bins to ensure the dignity of trans people who menstruate will have additional positive impacts on any staff who experience incontinence where there may not previously have been disposal facilities. There may also be indirect positive impacts on protected characteristic of Sex by raising awareness of menstruation in men's toilets, which will positively impact gender equality issues more widely. Previous guidance has indicated that non-binary employees may use accessible toilets if they feel most comfortable doing so as a gender-neutral option. There is potential for marginal negative impacts on protected characteristic of disability if separate gender-neutral facilities cannot be established in smaller rural premises and transgender or non-binary colleagues without disabilities may prefer to continue using accessible facilities. However, NHSH will be reviewing all possible opportunities to establish practicable solutions in all premises to balance access for disabled people and non-binary people appropriately and

proportionately. This is considered in conjunction with the relatively low population of transgender people in Scotland, of whom some may also be disabled and require use of accessible toilets. This will be reviewed on an ongoing basis to ensure provisions and decisions made are proportionate.

Fostering good relations between groups of people with protected characteristics, contributing to our Mainstreaming Equality outcomes, and giving due regard to the Fairer Scotland Duty, will provide employees with the protected characteristic of gender reassignment a safe and supportive working environment, which may contribute to reducing socio-economic deprivation for this group.

### **Impact on Sexuality, Race and Ethnicity**

Although there has been no identified specific positive or negative impact on the protected characteristic of sexuality, race or ethnicity, the equality impact assessment has considered that the intersectional nature of transgender identities, misogyny and Black and minority ethnicities leads to increased marginalisation. This global impact of violence is often annually highlighted on transgender day of remembrance, where homicide rates of trans people show black trans women are victims of global homicide over and above other identities of trans people. [Spotlighting the Intersection of Black and Transgender Identities - Human Rights Campaign \(hrc.org\)](#)

Considering this, the guidance aims to encourage an open and flexible view on gender presentation for all and incorporate information about intersections between being black and transgender to raise awareness.

We welcome feedback if impacts on sexuality, race & ethnicity are identified and contact information will be available on the document to provide feedback should any impacts be identified following distribution, and a review will be conducted after 12 months to consider feedback and any identified impacts.

### **Impact on Age**

Census data tells us that younger age groups have a higher trans population than older. NHS Highland offer work experience opportunities to young people from age 16 onwards, so an additional section has been added to guide named supervisors of work experience candidates.

## **Island Communities Impact Assessment**

The impact of confidentiality and privacy in island communities was considered in consultation with colleagues in Argyll and Bute, and thanks are extended for their contributions on the Island communities' impacts. Where the guidance had outlined the need for confidentiality at all times with regard to a transgender persons' status of transition, it was identified that in smaller island communities, as well as remote and rural communities, the close knit nature of communities changes the ways people experience privacy and may increase the individual visibility of an employee undergoing a workplace transition. Considering this, specific points of clarity have been added to encourage managers to discuss with colleagues whether they have chosen to disclose their transition to other members of the community and how confidentially information should be treated, being led by the employee in how their privacy can be respected best in smaller communities.

## **Given all of the above what actions, if any, do you plan to take?**

### **Training resources**

As part of this work, raising awareness of trans and non-binary employees in the workplace and support available was regularly requested within management. Trans and non-binary staff also agreed training would be beneficial to their colleagues. As the guidance itself may serve as an initial training document, this has been considered when writing the document and further resources for training opportunities added to the appendices. When planned National Education Scotland (NES) training to support workforce becomes available at the end of 2024, NHS highland will seek to run awareness sessions and include this in training frameworks for all staff.

### **Absence Triggers**

The guidance review prompted staff discussion around sickness absence triggers in relation to accessing gender affirming care. Reasonable adjustments can be made to triggers to appropriately account for medical absences where necessary, in line with Once For Scotland Attendance and Special Leave policies.



A potential discrepancy within the Once For Scotland Policy was identified relating to absence triggers, which may require further exploration from an equalities perspective. There are a number of circumstances where Once For Scotland absence policy explicitly mentions absences which would not count towards a sickness absence trigger, such as illness during a pregnancy, work-related illness, and medical suspension. It would be appropriate to reconsider whether this should explicitly include absence relating to accessing gender affirming care, and disability related medical absence, which both contribute to the improved or continuing wellbeing of an individual. The group acknowledge this change is outside the remit of the work but will share concerns appropriately to relevant Scottish Government officials.

### **Single Sex Spaces**

A consideration regarding access to toilets has also been made to balance the needs of non-binary employees, employees who wish to access single sex spaces for privacy and dignity relating to religion or belief, and disabled employees. The most practical solution to balance these needs has been to retain some single sex spaces while also redesignating some toilets as all-gender or gender-neutral toilets if this is not present, in addition to accessible toilets. This allows all to access toilets appropriate to themselves and their needs without unduly infringing on the availability of toilets to disabled people or others, where current estates allow, in line with the Equality Act 2010. Solutions will remain proportionate and with objective justification if accessible toilets are the only possible gender-neutral toilet facility. A tailored approach would be required across the board to consider on a local level the best solutions where buildings offer limited facilities, as a universal approach would not be feasible. However, the needs of non-binary staff and patients will be included in service redesign initiatives.

### **Actions**

Actions we will be taking:

- Revising/evaluating provisions for dignity and privacy of all in changing rooms and toilets
- Reviewing whether there is appropriate toilet provision for non-binary employees – signage
- Ensuring appropriate period product disposal facilities are available in toilets, which will incorporate and added benefit colleagues with incontinence
- Considering the needs of non-binary people in service redesign
- Incorporating within the guidance elements of awareness training as well as increasing the list of training resources available to staff in relevant Annex
- 12-month review period on the guidance, or review in conjunction with Once For Scotland guidance publication – whichever sooner.
- Contact email provided for ongoing feedback in guidance document

## Children's Rights Impact Assessment

What is the impact of this policy/service development on infants, children and young people? (The [United Nations Convention on the Rights of the Child](#) places a compatibility duty on public authorities including NHS Highland to ensure the rights of children are protected and promoted in all areas of their life).

For more information or support contact: NESH Child Health Commissioner: [deborah.stewart2@nhs.scot](mailto:deborah.stewart2@nhs.scot)

### What impact will your policy/service change have on Children's Rights?

Will the impact of your policy/service development on Children's Rights be Negative/Positive/Neutral? What articles of the UNCRC does the policy/service development impact on? Will there be different impacts on different groups of children and young people e.g. preschool children; children in hospital; children with additional support needs; care experienced children; children living in poverty?

This policy is applicable to NHS Highland Staff, which includes 12 employees under age 18 and volunteers. There is an added benefit to the impact this may have on knowledge and awareness of legislation and equality duties for trans people which is similarly applicable to transgender young people and children.

If a **negative impact is assessed** for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

A negative impact has not been assessed.

To ensure young people who are not employed by NESH but on a work experience placement, a new section has been added to the guidance to direct named supervisors who may use elements of the guidance for the benefit of young people.

**In what ways have you taken the views of children and young people into consideration in the development of this policy/service change?** What evidence have you used or gathered on children's views? How will you monitor the impact of the policy / service change and communicate this to children?

Young people employed by NHS highland have been included in the staff consultation process, which was open to feedback over September. The survey for all staff included a question about being under or over age 18, and all respondents were over 18. Data from August 2024 showed NHS Highland as employer of 12 young people age 16 or 17 (correct as of 1/8/24) and future

targeted consultation with young people will be conducted in conjunction with employability strategy work to ask for young people's views. Given the impacts are anticipated to be positive and the small numbers of under 18 employees, it was considered proportionate to not conduct any further targeted consultation on this guidance with under 18s.

**How will the policy / service change give better or further effect to the implementation of Children's Rights in NHS Highland?**

The protocol and guidance will further effect:

- Article 2, freedom from discrimination
- Article 8, where there have been considerations to promote systems change within NHS employment IT systems with respect of a name change
- Article 12 and 14 by supporting managers and colleagues to respect a young trans or non-binary individual.
- Article 32 of UNCRC, as to be supported in a gender transition in the workplace will promote wellbeing of the child.

**Approved by:**