



Equality Impact Assessment

Supporting Trans People: best practice guidance for health and care practitioners

Version: V1.2
24.11.2020



Equality Impact Assessment Form

1. What are the main aims, purpose and outcomes of the proposal?

Purpose of the Toolkit

Bristol, North Somerset and South Gloucestershire Clinical Commissioning Group (BNSSG CCG) takes its responsibilities with regard to equality, diversity and inclusion extremely seriously. We are committed to engaging with our whole population and designing and buying services that are informed by their needs and experiences. This Equality Impact Assessment (EIA) demonstrates our compliance with the Public Sector Equality Duty and our commitment to be transparent by publishing equality information.

The *Supporting Trans People Toolkit* (the toolkit) was commissioned in 2018, by Bristol CCG, Bristol Independent Mental Health Network (BIHMN), Devon Partnership NHS Trust and Avon & Wiltshire Mental Health Partnership NHS Trust (AWP). The purpose of the toolkit was to help health and care professionals to understand their needs and issues enabling them to provide better care for transgender people. A working group was responsible for authoring, reviewing and providing feedback on the toolkit, this included representation from North Bristol Trust, Priory Group and University Hospital Bristol. A list of participating organisations is included in the appendix.

This Equality Impact Assessment (EIA) reviews the toolkit as currently drafted to ascertain any potential impacts on the 9 protected characteristics. It also considers its legal basis, and identifies potential areas of risk, as well as offering mitigations and recommendations for next steps.

This EIA includes the following:

- Outline of engagement undertaken
- Equality analysis of the toolkit against the 9 protected characteristics
- Legal and safeguarding advice
- Summary and recommendations
- List of participating organisations

In compiling this EIA, we have reviewed the toolkit, the NHS Delivering Same-sex Accommodation Guide, the EHRC Code of Practice (for services, public functions and associations), legal advice from Bevan Brittan and documents submitted by members of the public for review. We have also conducted engagement with members of the public who made representations to the CCG in response to the toolkit's draft publication in November 2019.

Engagement

The organisation Stand Against Racism and Inequality (SARI) was commissioned to produce the toolkit, working in close partnership with a range of transgender people, clinicians and stakeholders from across the South West who comprise the document's working group.

The group have reported that in producing the toolkit, multiple organisations including mental health, learning and disability hospitals, acute hospital trusts, voluntary organisation, LGBT+ organisation and support groups, equalities specialists and a housing support organisation had either been consulted, written a section of the document or reviewed the draft.

The CCG has undertaken the following additional engagement in support of its EIA process:

26.03.20	External legal advice; Bevan Brittan
29.06.20	Local women's group representatives
02.07.20	Members of the public
14.08.20	Meeting with writing group
07.07.20	Governing Body Ethnical Decision Making Framework session
24.09.20	South West clinicians group
27.10.20	Additional meeting with writing group to review pathway section of toolkit

Desk research

Desk research was also undertaken looking at a range of evidence, reports and guidance. Hyperlinks are included throughout this document to referenced information. Several submissions of evidence were discounted from the analysis on the basis of relevance and/or source credibility.

In July, the CCG Governing Body considered the toolkit through the lens of its ethical decision making framework. This session considered terminology including definitions of sex and gender; the shifting national policy context (e.g. Gender Recognition Act reform) and the legal context (including current legal cases).

2. Does this Proposal relate to a new or existing programme, project, policy or service?

The '**Supporting Trans People**' guide is a new toolkit.

3. If existing, please provide more detail

N/A

4. Outline the key decision that will be informed by this EIA

The purpose of the EIA is to determine any potential impacts of the toolkit on protected characteristic groups, and to support the CCG'S Governing Body in its decision-making.

5. Does this proposal affect service users, employees and/or the wider community?

Provide more information on: Potential number of people affected, potential severity of impact, equality issues from previous audits and complaints. The key decision that will be informed by this EIA

The Supporting Trans People: best practice guidance for health and care practitioners has been designed to support transgender people's access to and experience of health and care services. There is limited data available on the UK transgender population, but various sources, including the Gender Identity Research and Education Service (GIREs) estimate that the UK transgender population is between 0.6%-1% of the total population.¹

Within the report from GIREs, it is estimated that in 2007 the prevalence of people who had sought medical care for gender variance was 20 per 100,000 (i.e. 10,000 people in total). Of this total, it was estimated that 6,000 had undergone transition; 80% were assigned as boys at birth and 20% as girls. GIREs also references more recent data from the individual Gender Identity Clinics to anticipate that the gender balance may eventually become more equal.

Following publication of the draft toolkit in November 2019, the CCG received a number of representations from women's groups and members of the public to suggest that the toolkit as currently written could have an adverse impact on women and girls. Further detail is included within the Equality Analysis section below.

¹ Various sources reviewed:

- The Gender Identity Research and Education Service (GIREs) estimated the trans population (people who experience some degree of gender variance) at between 0.6%-1% of the UK adult population within a [2011 report funded by the Home Office](#). This report references that no robust data are available for the UK, therefore the report draws on overseas estimates of prevalence of transgenderism, including data from the American Psychological Association and from the Netherlands

- A [factsheet produced by the Government Equalities office](#) also estimates the size of the total trans population as between 200,000 and 500,000 (no source quoted)

- A [reference on the Stonewall website](#) estimates the total trans population at 1% of the total UK population (no source quoted)

6. Could the proposal impact differently in relation to different characteristics protected by the Equality Act 2010?

Assess whether the Service/Policy has a positive, negative or neutral impact in relation to the Protected Characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief and sex.

- **Positive** impact means reducing inequality, promoting equal opportunities or improving relations between people who share a protected characteristic and those who do not
- **Negative** impact means that individuals could be disadvantaged or discriminated against in relation to a particular protected characteristic
- **Neutral** impact means that there is no differential effect in relation to any particular protected characteristic

Equality Analysis

The following section provides detailed analysis of the toolkit's potential impact on people who hold one or more of the 9 protected characteristics. In summary:

Protected Characteristic	RAG	Impact
Age		Neutral/Negative
Disability		Neutral/Negative
Gender reassignment		Positive
Race		Neutral
Religion and Belief		Neutral/Negative
Sex		Neutral/Negative
Sexual Orientation		Neutral
Pregnancy and Maternity		Neutral
Marriage and Civil Partnership		Neutral

For the characteristics of Age, Disability (particularly those living with mental health conditions or who have learning difficulties), Religion and belief and Sex, some sections of the toolkit, as it is currently written, could create a neutral or negative impact. To be clear, there is no evidence that individuals with gender dysphoria pose a threat to other groups. Our analysis raises concerns that some sections of the toolkit, as it is currently written, are not sufficiently clear and could be misinterpreted.

The toolkit is likely to have a positive impact for those with the characteristic of gender reassignment.

Please refer to table below for a breakdown by protected characteristic.

* Under-18s are only protected against age discrimination in relation to work, not in access to services, housing, etc. Children's rights are protected by several other laws and treaties, such as: The Children Act; the Human Rights Act 1998; the UN Convention on the Rights of the Child; the European Convention on Human Rights; the UN Convention on the Rights of Persons with Disabilities; and the UN Convention on the Elimination of Discrimination against Women.



Protected Group	RAG	Impact	PSED	Risk/ Mitigation
Age		Neutral/ Negative	<p>The toolkit references the treatment of young transgender people. According to the <u>University of Cambridge/Stonewall School study 2017</u> young transgender people report that they have experienced high rates of poor mental health as a result of being bullied, being stigmatised, experiencing isolation and gender dysphoria. According to the study 1 in 4 have self-harmed and 2 in 5 have attempted to take their own life. <u>Of the 3,713 respondents, 16% said they were transgender and 8% were questioning their gender identity.</u> A <u>British Medical Journal</u> article stated that some health care professionals can feel pressured to initiate physical intervention without consultation with psychological colleagues.</p> <p>The toolkit can help to educate health and care staff about the specific challenges this group faces; without undermining the need to respect, safeguard and care for all children. A U.S. study identified that <u>socially transitioned</u> transgender children (children presented and raised as their preferred gender) have better mental health outcomes therefore appropriate support is vital for their overall wellbeing and health.</p> <p>The toolkit currently states that ‘doing nothing’ (in terms of treatment for young people) ‘causes harm’. Conversely, a group of South West clinicians who made representations to the CCG during the EIA process positioned that a policy of ‘watch and wait’ is preferable in the short to medium term for many children and young people presenting with gender confusion.</p>	<p>Risk: Potentially to young or older women who are likely to feel/be more vulnerable in a hospital setting.</p> <p>Mitigation: The toolkit should expressly state that the intended audience are mental health care professionals and GPs.</p> <p>The toolkit should align with the Code of Practice. Where policy calls for a risk assessment, EHRC Code of Practice states the provider should apply this policy on a case-by-case basis. The Code goes on to say service providers will need to balance the need of the transgender person for the service and the detriment to them if they are denied access, against the needs of other service users and any detriment that may affect them if the transgender person has access to the service. This was supported by legal advice received “reliance on the exemptions under the Equality Act 2010 (EqA) will only be done in exceptional circumstances and does create a status quo going forward”.</p> <p>The safeguarding section is currently very brief, and in line with the CCG’s own policy, should state clearly that practitioners need to consider and specifically ask or screen for safeguarding and risks to a young person’s wellbeing.</p> <p>In line with the CCG safeguarding policy we recommend that “the practitioner should be fully aware of a holistic approach for young people,</p>

		<p>The toolkit references gender identity development service (GIDS) for children and the use of hormone blockers and sex hormones. The NHS stance is that <u>“little is known about the long-term side effects of hormone or puberty blockers in children with gender dysphoria...”</u> These clinics are commissioned by NHS England & Improvement. <u>NHS England & Improvement</u> is currently undertaking a review of gender identity services for children and young people, the review will include examining the issues surrounding prescribing puberty blocking and cross sex hormone drugs to children and young people, the review will be overseen by Dr Hillary Cass OBE.</p> <p><u>A 23 year old woman</u> has taken legal action against the Tavistock and Portman NHS Trust Gender Identity Development Services (<u>GIDS</u>) as the claimant believes she was too young to make an informed decision about medical transition. She began taking puberty blockers at the age of 16.</p> <p>Research evidence: The <u>Delivering Same-sex Accommodation</u> Guide identifies a number of justifiable breaches where mixed sex may be permitted e.g. critical care settings, end of life care, and should be read in conjunction with the toolkit.</p> <p>The Equality & Human Rights Commission (EHRC) Equality Act 2010 (EqA2010) <u>Statutory Code of Practice</u> provides guidance to support interpretation of the EqA2010, the Act states a service provider may provide a different service or exclude a person from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate. Further points are included to help the reader apply the law - see appendix for more detail</p>	<p>promote typical wellbeing advice, and apply professional curiosity to ensure they ask the right questions to enable them to deliver the right help.” This might also require them to refer to their safeguarding team or safeguarding policy for guidance (see appendix).</p> <p>Remove reference to hormone blockers and cross-sex hormones pending the outcome of the nationally commissioned Hilary Cass review.</p> <p>The statement “doing nothing or delaying treatment CAUSES HARM” should be removed.</p> <p>Legal advice:</p> <p>Legal advice must be shared with the authors of the toolkit.</p>
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			on EHRC guidelines.	
Disability		Neutral/ Negative	<p>A recent article in the HSJ highlighted that there are hundreds of sexual assaults each year on mental health mixed-sex wards. Mental health inpatients are an extremely vulnerable group.</p> <p>Provision of same-sex accommodation has therefore been considered particularly important for male and female service users in a mental health setting. Women and young people are notably vulnerable during a period of inpatient care. Some service users may have a history of sexual abuse, disinhibition or offending that can exacerbate risk.</p> <p>There is some evidence of a relationship between autistic spectrum disorder and gender dysphoria, and issues around capacity and consent (as referenced in this study from Oxfordshire around gender reassignment).</p> <p>Young people who are referred to a GIDS may go through a rigorous process before any medical intervention takes place, <u>but there is a small percentage (less than 1%) of people who de-transition mostly as a result of unsatisfactory surgical procedures or social difficulties.</u></p> <p>Research evidence: The Delivering Same-sex Accommodation Guide identifies a number of justifiable breaches where mixed sex might be permitted, e.g. critical care settings, end of life care and should be read in conjunction with the toolkit. Mental health and inpatient wards should never be mixed.</p> <p>Mental Health Network Briefing: Delivering same-sex accommodation in mental health and learning disability</p>	<p>Risk: Potentially to vulnerable adults and children with mental health issues and learning difficulties</p> <p>Mitigation: The section on crisis management is not sufficiently clear, the document does not stipulate that it is intended for readers in a mental health setting and therefore reference to being admitted in a crisis and the use of risk assessment is not interpreted in its intended context. Prioritising the needs of anyone in crisis would be appropriate in those circumstances. The intended audience should therefore be stated. Where policy calls for a risk assessment EHRC Code of Practice states, the provider should apply this policy on a case-by-case basis, balancing the needs of either patient/s, as noted in the above section (Age).</p> <p>The toolkit should make reference to the fact that some - albeit a very small percentage of people - de-transition; and highlight that there are risks to certain medical interventions.</p> <p>The toolkit currently states that “providing education to other service users in a ward to prevent ignorant or transphobic comments is, if successful, a better solution than having to protect or isolate the trans service user” – this reference should be removed.</p> <p>The toolkit should direct the reader to the relevant national guidance; NHS England’s Delivering Same-sex Accommodation.</p> <p>Legal advice:</p>

			<p><u>services</u>, The NHS Confederation, January 2010</p> <p>The Equality & Human Rights Commission (EHRC) Equality Act 2010 (EqA2010) <u>Statutory Code of Practice</u> - see appendix for more detail on EHRC guidelines.</p>	<p>Legal advice must be shared with the authors of the toolkit.</p>
Gender Reassignment		Positive	<p>The toolkit is in line with the section of the NHS '<u>Delivering Same-sex accommodation</u>' guide published by NHS England, which states that transgender people should be treated according to the gender in which they present (Annex B).</p> <p>It is also in line with GMC guidance. The <u>GMC Ethical guidance for transgender care</u> states "Transgender and non-binary people experience the same health problems as everyone else and have very few differing needs. If a health problem is unrelated to gender dysphoria or its treatment, you must assess, provide treatment for and refer transgender patients the same as your other patients"; and highlights the duty of doctors including the need to treat all patients fairly.</p> <p>Under the Equality Act 2010 a person is protected under the characteristic of gender reassignment if they propose to transition; are in the process of transitioning; have transitioned, or started the journey but stopped.</p> <p>The <u>EHRC</u> states "In UK law, 'sex' is understood as binary, with a person's legal sex being determined by what is recorded on their birth certificate. A transgender person can change their legal gender by obtaining a GRC. A transgender person who does not have a GRC retains the sex recorded and is protected under the Equality Act as per their legal sex or under the protected characteristic 'Disabled' in some circumstances (impaired or limited ability to engage in certain tasks or actions, or to participate in typical daily activities).</p>	<p>Risk: No risk</p> <p>Mitigation: N/A</p>

On 22.09.20, the Government issued a response to the consultation on the 2004 Gender Recognition Act (GRA). The proposal to move to a process of gender self-identification was not adopted; the process will not be de-medicalised.

The Equality Act 2010 does permit service providers to provide a different service or exclude a person from the service who is proposing to undergo, who is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate aim (Code of conduct 13.57). The intention is to ensure that the transgender person is treated in a way that best meets their needs and to best meet the needs of any other patients. The Code of Practice states any policy should be on a case-by-case basis and balance the needs of the transgender person and any other.

The Code of Conduct also states the right to privacy must be maintained for patients recognised under the Gender Recognition Act. Therefore, clinicians must carefully manage any conversations. The legal advice received by the CCG recommends training for clinicians must include current changes to policy to avoid breaches.

Research evidence:
Sheffield Hallam University Study - the Scottish Transgender mental health study; GMC Disclosing patients' personal information: a framework; GMC Ethical Guidance for transgender healthcare; Stonewall School Report 2017; Mental health of Transgender Children who are supported in their identities.

			<p><u>The Equality Act 2010 Schedule 3 Part 7</u> (paragraph 27 and 28) addresses provision of separate and single services (separate services for the sexes), under S3 part 7 exceptions to the general prohibition of sex discrimination which allow the provision of separate services for men and women. See appendix.</p>	
Race		Neutral	<p>There is no evidence to show that any elements of the toolkit would have an impact on race.</p> <p>The toolkit should be read in conjunction with the Delivering Same-sex Accommodation Guide.</p>	<p>Risk: No risk</p> <p>Mitigation: N/A</p> <p>Legal advice:</p> <p>Legal advice must be shared with the authors of the toolkit.</p>
Religion & Belief		Neutral/ Negative	<p>The relationship between transgender people and people who practice a religion <u>varies widely</u>. For some religions, <u>modesty is strongly correlated with faith and this will include the need for segregation</u> on the basis of sex. Because of this, where mixed wards are concerned there is potential negative impact. If this is the case the clinical team must take this into account, but this should be balanced against clinical priorities and the rights of the transgender person, as both characteristics are equally protected under the law.</p> <p>EHRC Code of Practice states, the provider should apply this policy on a case-by-case basis. Service providers will need to balance the need of the transgender person for the service and the detriment to them if they are denied access, against the needs of other service users and any detriment that may affect them if the transgender person has access to the service.</p> <p>NHS England is to update the Same-sex Accommodation</p>	<p>Risk: Potentially to women on grounds religion</p> <p>Mitigation: The toolkit should direct the reader to the Delivering Same-sex Accommodation Guide.</p> <p>Remove the sentence with the wording 'education' from the crisis section.</p> <p>Amend the sentence around risk assessment. Where policy calls for a risk assessment EHRC Code of Practice states, the provider should apply this policy on a case-by-case basis, balancing the needs of either patient/s, as noted in the above section (Age).</p> <p>Legal advice:</p> <p>Legal advice must be shared with the authors of the toolkit.</p>

			<p>Guide and the CCG is hopeful of further clarification on its application in this context.</p> <p>Research: The <u>Delivering Same-sex Accommodation</u> Guide</p>	
Sex		Neutral/ Negative	<p>The toolkit as it is currently written does not recognise sex as a protected characteristic under law.</p> <p>Members of the public who have engaged with the CCG in this process were concerned about the section on same-sex wards. Those who engaged with the CCG expressed concerns that women who have experienced trauma and abuse could effectively be placed on mixed-sex wards without knowing it and that this compromises dignity, safety and for some women, religious custom.</p> <p>Research: <u>The public perceptions survey</u> “Eight in ten men agree they would feel safe in an NHS hospital if very ill compared with seven in ten women (80% agree compared with 70%)” (pages 46/47, Dec 2011). Seventy percent of all women surveyed felt safe in a hospital setting; their sense of safety was also dependent on age. 83% of the 16 to 24 year old group felt safe, and 78% of those over 65 would feel safe in an NHS hospital if very ill; 35 to 54 year olds felt the least safe (70% agree). Links shared by members of the public including ‘grey’ literature (produced by organisations outside of traditional academic or known distribution channels) have been reviewed and has highlighted the specific needs and concerns of very vulnerable women.</p> <p>The Delivering Same-sex Accommodation Guide published by NHS England states that “there are no exceptions to the need to provide high standards of</p>	<p>Risk: Potentially to vulnerable women on grounds of history of trauma or religion</p> <p>Mitigation: The toolkit should acknowledge sex as a protected characteristic in the section that references same sex accommodation.</p> <p>The toolkit should direct the reader to the Delivering Same-sex Accommodation Guide.</p> <p>Previous references to risk assessment apply.</p> <p>The toolkit references ‘educating’ patients, this paragraph should be deleted as stated above.</p> <p>Legal advice: Legal advice must be shared with the authors of the toolkit.</p>

			<p>privacy and dignity at all times.” Same-sex wards were established to achieve this aim. However, the guide states a number of exceptional circumstances where there is a clinical need when a breach might be justifiable (e.g. critical care settings, end of life care). Annex B of the guide states that transgender people are to be treated as the sex in which they present. A transgender person can be discriminated against if justifiable “provided that it is a proportionate means of achieving a legitimate aim”.</p> <p>NHS England is to update the Same-sex Accommodation Guide and the CCG is hopeful of further clarification on its application in this context.</p> <p><u>EA2010 Statutory Code of Practice.</u></p>	
Sexual Orientation		Neutral	<p>There is no evidence to show that any elements of the toolkit would have an impact on sexual orientation.</p> <p>The toolkit should be read in conjunction with other materials e.g. Delivering Same-sex Accommodation Guide.</p>	<p>Risk: No risk</p> <p>Mitigation: N/A</p>
Pregnancy & Maternity		Neutral	<p>There is no evidence to show that any elements of the toolkit would have an impact on marriage and civil partnership.</p> <p>The toolkit should be read in conjunction with the Delivering Same-sex Accommodation Guide.</p>	<p>Risk: No risk</p> <p>Mitigation: N/A</p>
Marriage & Civil Partners		Neutral	<p>There is no evidence to show that any elements of the toolkit would have an impact on marriage and civil partnership.</p> <p>The toolkit should be read in conjunction with the Delivering Same-sex Accommodation Guide.</p>	<p>Risk: No risk</p> <p>Mitigation: N/A</p>



Relevance to the Public Sector Equality Duty - Please select which of the three points are relevant to your proposal. There is a general duty which requires the system to have due regard to the need to:

7. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010?

Does this proposal address risk in relation to any particular characteristics?

The toolkit has the potential to reduce or eliminate unlawful discrimination, harassment and victimisation if applied as a tool that will help health and care staff to understand the needs of transgender people.

With reference to mixed-sex accommodation, there is potential negative impact for some groups, in particular vulnerable women and people who practice a faith or belief based on religious observance as outlined in the equality analysis section.

The toolkit has been reviewed by legal advisors Bevan Brittan. The endorsement of the toolkit does not appear to be in contravention of the legal framework or Public Sector Equality Duty (PSED).

8. Advance equality of opportunity between people who share a protected characteristic and those who do not?

Will this proposal facilitate equality of opportunity in relation to particular characteristics?

Yes – for its intended beneficiaries transgender children and adults. The toolkit proposes that the provider trains its staff and widely disseminates the toolkit to improve the service experience of a group that are disproportionately impacted by inequality. The toolkit highlights the need for risk assessment for each admission and provides references to further material to support education of staff.

9. Foster good relationships between those who have protected characteristics and those who do not?

Will this proposal foster good relationships between people of one group and another?

Yes – any opportunity to improve service for all patients will foster good relationships between the public and the provider; including the education of staff.



Summary & Recommendations

The toolkit has the potential to provide useful information for healthcare staff who need to improve their everyday interactions with transgender people. The toolkit has moved beyond its original intent which was to support GPs and staff in a mental health setting; the document does not clearly state that it does not supplement or replace treatment guidelines or present a treatment pathway.

Research and engagement during this process has highlighted a number of ways that the toolkit could be improved:

- The legal section of the document could be developed to help the reader better understand the rights afforded by the Equality Act, including referencing the Public Sector Equality Duty. Also, references to the Gender Recognition Act (GRA) 2004 could be developed to include differences between those who hold a Gender Recognition Certificate and those who do not and the legal protection this affords e.g. data protection implications. Extract of the legal advice is included in the appendix.
- It is good practice to include sample sizes when quoting statistics to enable the reader to contextualize the level of risk. Statistics quoted should be updated to reflect this and the reference to suicide removed.
- Research would be well supported with the inclusion of case studies.
- Staff training is integral to delivery patient-centred care. The section of staff training should recommend providers must commission robust training including relevant risk assessment processes, policy and legislation (see legal advice).

This exercise has identified a number of risks to the protected groups (age, sex, disability, religion and belief); and recommends a number of actions that mitigate those risks. In order for the CCG to endorse the toolkits the following changes should be made, the above improvements have been included:

1. The following changes should be made to the toolkit:
 - a. Revised introduction – There should be a clear statement about the intended audience and the purpose of the toolkit; i.e. a clear statement that the toolkit is not a treatment guide.
 - b. The section on ‘what it means to be trans’ should be made simpler and clearer.
 - c. The document should recognise sex as a protected characteristic in the section that refers to same-sex accommodation (crisis section).
 - d. Update references to statistics in the document ensuring the total population size is included to provide context and remove references to suicidality in young people (treatment works section).

- e. Rename the Treatment Pathway section making clear that this is not a defined / single treatment pathway; the heading should instead reflect that it is a typical journey someone might take.
- f. Remove reference to hormone blockers and cross-sex hormones pending the outcome of the nationally commissioned Hilary Cass review.
- g. Make reference to the fact that some - albeit a very small percentage of people - de-transition; and highlight that there are risks to medical interventions. Remove the sentence: 'doing nothing causes harm'.
- h. Strengthen the sections on lived experience through the use of case studies.
- i. Update the legal section.
- j. Remove sentence relating to 'education' of patients in the crisis management section.
- k. The reader should be encouraged to ensure training is robust and includes changes in transgender policy.
- l. The section on crisis should align with the Delivering Same-sex Accommodation Guide. References to risk assessment should be in line with EHRC code of practice section on policy (weighing up the needs of both the transgender patient and any other patient); and signpost readers to the 'Delivering Same-sex Accommodation Guide.
- m. The toolkit should direct the reader to review their safeguarding policy and the reader should be encouraged to assess the person holistically and with professional curiosity and always step back and ask themselves objectives questions about their assessment and treatment plan. (see appendix: safeguarding advice).

2. Resubmit the revised toolkit for Governing Body approval.

Appendix

Legal Advice

The legal basis of the EIA had been challenged and in response the CCG sought legal advice. The following recommendations (extract) were received from our legal team:

The wording of any adopted policy, whether that is the Toolkit itself or some other format of guidance, should include wording to the effect of the below:

- an understanding of the distinction between those with or without a GRC, as well as the legal protections that this affords (or doesn't, if applicable) in relation to healthcare service;
- explicitly stating that any allocation to single sex services would be made following a thorough case by case analysis and would seek to achieve a reasonable balance between competing legal rights - perhaps with reference to guidance.....; and
- including provisions outlining that reliance on the exemptions under the EqA will only be done in exceptional circumstances and does create a status quo going forward, again reiterating the CCG's duty to protect all individuals' rights as far as possible.
- Amend the wording of the toolkit in line with legal recommendations leaving no room for misinterpretation. Strengthen recommendation for training to include best practice in compliance and legal framework.
- If formal guidance or policy is planned for implementation, arrange for substantial internal training and communications for all staff so that they can be assured of best practice in compliance with the legal framework. This would need to include accepted protocol for deciding, or not, to separate any patients by relying on an EqA exemption and an appropriate route for patients to seek redress.
- Proceed with the EIA including engagement to open dialogue around transgender issues and share the CCG line on the toolkit and the importance of this work.

CCG's Safeguarding Policy

[Hyperlink to policy.](#)

National policy context

A number of contextual factors that were considered during the undertaking of this EIA remain live issues;

NHS England (NHSE) launched an independent review into the Gender Identity Development Service (GIDS), which was announced in September 2020. The review will focus on how and when children are referred, how care can be improved and clinical practice. The review will also examine the recent rise in children seeking treatment and issues around the use of puberty blockers and cross-sex hormones in this cohort.

The CCG has asked NHS England to confirm if there are plans to update the national NHS Delivering Same-sex Accommodation Guide. The EIA will be shared with the team. The 'Delivering Same-sex Accommodation Guide states that it is not a requirement to hold a GRC, however Matt Hancock Secretary of State for Health & Social Care is quoted in a [Telegraph article](#) (March 2019) stating that was the case, this view was also taken by other articles in the research. The health secretary also stated both NHS rules and the law needed serious consideration. The guide does not currently express that admitting a patient who does not hold a GRC should be reported as a breach.

NHS Greater Glasgow & Clyde Trust produced a transgender toolkit to support its staff, which was also challenged. This toolkit is currently under review following consultation with the Equality Human Rights Commission (EHRC). A statement will be issued to the CCG following the conclusion of their review and due process.

A paragraph will be added to this EIA at a later date when an update is available.

Guidelines: EA2010 Statutory Code of Practice (EHRC)

The above guideline was used as an evidence based for the usage of same sex accommodation. This document is a Statutory Code of Practice. This is the authoritative, comprehensive and technical guide to the detail of law.

13.54: Single sex only services

The Act provides that it is not unlawful sex discrimination to provide separate services for each sex if: b) the limited provision is a proportionate means of achieving a legitimate aim. And at least one of the condition applies, in NHS case

d) The service is provided at a hospital or other place where users need special care, supervision or attention.

13:57 Gender reassignment discrimination and separate and single-sex services

If a service provider provides single- or separate sex services for women and men, or provides services differently to women and men, they should treat transgender people according to the gender role in which they present. However, the Act does permit the service provider to provide a different service or exclude a person from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate.

13.59

Service providers should be aware that where a transgender person is visually and for all practical purposes indistinguishable from a non-transgender person of that gender, they should normally be treated according to their acquired gender, unless there are strong reasons to the contrary.

13.60

As stated at the beginning of this chapter, any exception to the prohibition of discrimination must be applied as restrictively as possible and the denial of a service to a transgender person should only occur in exceptional circumstances. A service provider can have a policy on provision of the service to transgender users but should apply this policy on a case-by-case basis in order to determine whether the exclusion of a transgender person is proportionate in the individual circumstances. Service providers will need to balance the need of the transgender person for the service and the detriment to them if they are denied access, against the needs of other service users and any detriment that may affect them if the transgender person has access to the service. To do this will often require discussion with service users (maintaining confidentiality for the transgender service user). Care should be taken in each case to avoid a decision based on ignorance or prejudice. Also, the provider will need to show that a less discriminatory way to achieve the objective was not available.

2.27

States "Transgender people should not be routinely asked to produce their Gender Recognition Certificate as evidence of their legal gender. Such a request would compromise a transgender person's right to privacy. If a service provider requires proof of a person's legal gender, their (new) birth certificate should be sufficient confirmation."

The Equality Act 2010 Schedule 3 Part 7

Paragraph 27 and 28 addresses provision of separate and single services (separate services for the sexes), under S3 part 7 exceptions to the general prohibition of sex discrimination which allow the provision of separate services for men and women. Paragraph 27 states single sex services are permitted where:

- Only people of that sex require it;
- There is joint provision for both sexes but that is not sufficient on its own;
- If the service were provided for men and women jointly, it would not be as effective and it is not reasonably practicable to provide separate services for each sex;
- They are provided in a hospital or other place where users need special attention (or in parts of such an establishment);
- They may be used by more than one person and a woman might object to the presence of a man (or vice versa); or
- They may involve physical contact between a user and someone else and that other person may reasonably object if the user is of the opposite sex.

In each case, the separate provision has to be objectively justified. Included in the examples on the Equality Act webpage (www.legislation.gov.uk) of allowable exceptions is “separate male and female wards to be provided in a hospital”.

Paragraph 28 of part 7, contains an exception to the general prohibition of gender reassignment discrimination in relation to the provision of separate and single-sex services; discrimination by the provider has to be objectively justified.

Engagement meeting notes and draft toolkit

Meeting notes provided under separate cover. The meeting with representatives from a number of women’s organisations was held in confidence at their request, therefore there are no meeting notes from this engagement.

A list of partners who have been involved/ consulted*/ inputted into the draft has been provided by SARI:

- Avon and Wiltshire Partnership NHS Trust (AWP)
- Priory Group
- Diversity Trust
- LGBT Bristol
- Devon Partnership NHS Trust
- NHS Bristol, North Somerset & South Gloucestershire CCG
- OTR Bristol
- University of Bristol
- Crossroad (support agency for trans people)
- North Bristol NHS Trust
- Bristol Mind
- St Mungo's
- Independent Mental Health Network
- University Hospitals Bristol & Weston NHS Foundation Trust
- SARI

*consultation includes obtaining support in principle.



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