From : Womens Declaration International (WDI) : UK Chapter

WDI is an international women's organisation launched in 2019. Our Declaration on Women's Sex-Based Rightshas been signed by over 30,000 people, in 158 countries. We campaign to preserve and safeguard women's sex-based rights as enshrined in the UN CEDAW treaty adopted in 1979.

The UK's Equality Act 2010 provides for single-sex spaces, using protected characteristic of 'sex' and not 'gender'.

The WDI UK chapter represents 4,500 signatories who raise concerns through various campaigns and political lobbying. We challenge breaches of women's sex-based rights especially in public services such as the NHS, schools, social services, prisons, rape crisis centres, women's refuges, sport changing rooms and public toilet facilities.

Q1 Privacy, Dignity, Safety

The single-sex (SSA) policy 2012 pledge is one area that the WDI research team have investigated. WDI produced research in 2021 that found 52 NHS trusts in England made no mention on their websites or patient information leaflets about the 2012 pledge to SSA. The return to SSA from mixed-sex accommodation (MSA) was a 30-year campaign lead by the public who wanted the NHS to return to single-sex wards for privacy, dignity and safety, when at their most vulnerable as unwell people receiving treatment within the NHS.

Breaches following the 2012 pledge were mandated and enshrined within the NHS England constitution, signalling that the issue of SSA were being taken seriously by the NHS and their service providers.

The addition of Annex B in 2019, as noted in WDI research 2021, contradicted the 2012 pledge and stated that 'trans people and gender-variant children be placed on wards in line with their dress and preferred pronouns', rather than their biological sex. NHS has no stats on those who claim a trans identity but it is estimated that 2.9% of the 0.3% per cent of those who identify as trans do not take any steps on the journey to medical transition, leaving 97.1% who do not take any such steps, mostly males who retain their genitals.

The Equality Act 2010 recognises that 'sex' is one of the nine protected characteristics, along with 'gender reassignment'. So far in England self-identifying to the opposite sex is not law, yet appears to be presented as such in Annex B.

This leaves the NHS compromised within its own SSA 2012 policy. In a recent serious SSA breach a woman alleged she was raped on a ward. The NHS trust denied the rape could have happened as only women were on the ward. The trust only confirmed that there was a self-identified male on the ward after a year and during the police investigation.

WDI, along with other women's organisations and the general public, believe SSA must not accommodate patients of the opposite sex on single-sex wards, no matter self-identified 'gender'.

To do so puts not only the spirit of the 2012 pledge at risk, but also challenges the NHS's own statement that the privacy, dignity and safety of NHS inpatients is a strict priority.

The general public want full single-sex wards and have campaigned hard for 30 years to have such a service returned. SSA was returned at great expense over several years following the 2012 SSA pledge. The 2019 SSA review put all of that investment and effort into jeopardy and confusion, without any consultation with the public.

The current 2022 review has not been well-publicised beyond the professionals within the NHS, leaving organisations such as WDI with little time to respond. WDI is not even sure what the purpose or terms of reference for such a review are, however we strongly urge the review body on behalf of our 4,500 signatories to address the following list to ensure a robust, transparent, equitable SSA policy emerges that the public, especially women have confidence that when they are entering inpatient NHS services they can do so with confidence that their privacy, dignity, safety is never compromised.

List

1. Women's privacy, dignity and safety must not be compromised/violated by men, however they identify, being admitted to women's wards. Dignity means worthy of respect, and should extend to all patients. Extension of rights to SSA to one group at the expense of the majority is not acceptable or equitable.
2. Women's privacy, dignity requires that a female chaperone of the same sex is available when intimate examinations are required or where assisted personal hygiene is provided.
3. Women's privacy, dignity and safety must not be compromised by staff insisting that women accept without equivocation that a man on the ward is a woman. This would be a violation under the Equality Act 2010 where belief is protected.
4. Women of the Jewish, Muslim and Hindu other faiths have rights to their religious beliefs as a protected characteristic under the Equality Act 2010. Which means when they are NHS inpatients SSA must not be violated by the presence of a male patient or intimate procedures carried out by a male heath care professional without consent from the patient or their family or advocate.
5. The original 2012 SSA was an adequate policy, with a reporting mechanism for breaches. It was accepted that during the height of the pandemic that policy was suspended until October 2021 due to lack of bed capacity. For the NHS to be transparent the public need to know how breaches of SSA are recorded. This has never been disclosed by the data collection section of the NHS. WDI argue that unless patients' data is recorded on the basis of biological sex, rather than gender, how is it possible for the NHS to produce data that is correct and meets the needs of the public regarding both current and future health needs? WDI recommend a return to data sets that record all patients' sex first and foremost, given the biological differences in diseases and health promotion. 'Gender' is a presentation and needs to be recorded as secondary separate data set from biological sex, this would enable greater awareness of the needs of the trans community as a unique group of people rather than conflated with the general population.
6. How can breaches be correct if data is collected on the basis of 'gender' rather than biological sex? A man on a women's ward who is recorded as a woman, or a woman who is recorded as a man is a breach, but it does not appear to be if the trust is recording data on the basis of 'gender' rather than sex. WDI understand that across the health culture recording breaches is confusing and lacks clarity. Some trusts are recording on the basis of biological sex, others on declared 'gender'. This makes data unreliable and not fit for purpose, a waste of resources, making it impossible to tell, due to lack of transparency, whether or not policy is being breached.

7. Exceptions under the Equality Act 2010 relevant to single-sex services within the NHS should be applied. Schedule 3, Paragraph 26/27 allow service providers to legally provide separate services for men/women, or only women in certain circumstances. This should be applied to the NHS SSA in its review, to ensure the policy robustly defends women's right to safety.

What helps maintain privacy, dignity, safety?

For patients:

- The reinstatement of SSA 2012 is crucial if the spirit of the 2012 pledge is not to be violated by allowing single-sex wards to be breached by the admission of people of the opposite sex, with a self-identified 'gender'. The obvious contradiction needs to be equitably remedied.
- Acknowledgement that for the vast majority of the public entering inpatient NHS services it is a stressful and extremely anxious time for the patient, their families, carers and friends. This event should not be overlaid with further anxiety that the pledge of SSA 2012 has been breached.
- Inpatients and their families need to be made aware prior to admission whether their hospital has pledged to uphold SSA, this is not the case at present as evidence by WDI 2021 report. (see WDI website SSA research WHRC Cleaves & Namdarkhan 2021). How can patients and their families challenge obvious breaches if they are not aware of the 2012 pledge?
- In the interest of patients' right to privacy, dignity and security, staff need to be open, honest and empathetic ,especially towards women, if breaches unwittingly occur. Patients need to have confidence in the professionals who are responsible at all levels for their privacy, dignity and security during their hospital stay.

For Staff:

- Guidance around SSA must be clear. The 2012 policy was very clear and all staff as we understand it were well versed in how the policy pledge was delivered and breaches monitored. The addition of Annex B in 2019 added complications to a fairly straightforward public demand for SSA. Annex B, simply read, appeared to contradict the 2012 SSA policy in total. It asked staff to 'assess on the basis of dress and pronouns', and the patients declared gender, which sex-based ward they could be admitted to that matched their declared gender.
- The review needs to clarify what it is asking staff to do by assessing a patient by observation whether a man is a women, then admitting that person to a women only ward. Would that not be a serious known breach of the 2012 SSA and the Equality Act of 2010? For many staff they would be required to lie about what they observe, which compromises staff professional rights. Many of the public dress in gender non-conforming ways but would on admission to hospital be accurately observed as female or male, since clothes or pronouns are not a determining factor for knowing the difference between men and women, girls and boys. This fact does not involve intimate examination of a patient's reproductive biology, mere observation is sufficient to tell a person's sex in the vast majority of the population.
- Further training for staff is essential if they are not to be responsible for unwitting SSA breaches or inaccurate recording of breaches that mask the presence of men on women-only wards.

Research:

There needs to be greater research into the impact that conflating sex with 'gender' has had within the NHS. Such conflation denies the ability of the service to be equitable to all patients.

1. Accurate data sets based on ‘gender’ as the significant marker rather than biological sex cannot provide accurate data that benefits the general population’s health needs, both now and in the future. There is much confusion, e.g. healthcare screening that targets women for cervical screening now being referred to as ‘people with a cervix’. By contrast prostate screening for men is referred to correctly as ‘men with a prostate glands’ rather than ‘people’. Such descriptions levelled at women are insulting and affronting and possibly contravene the Equality Act of 2010.
2. Recognition/training by practitioners that male/female biological health needs differ on the basis of sex not ‘gender’. To refer in medical terms to ‘gender’ in this way masks the need for specific healthcare for both the general population and trans-identified people.
3. The ‘new guidance’ should be evidence-based since the public want SSA without confusion or being expected to tolerate breaches that meet the needs of one group while violating those of another.
4. The NHS needs to commission some serious research with the public about how services can be delivered that both provide privacy, dignity and safety to the majority of the public as well as to minority vested interest groups such as trans-identified people.

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