LGBTQ+ Leaders Network
NHS Confederation

Leading for all: supporting trans and non-binary healthcare staff

September 2023

In partnership with

LGBT FOUNDATION

Contents

Version 1.0	June 2023	First published version of the document.
Version 2.0	September 2023	This version incorporates updates following further research and legal review, featuring updates to ‘What the law says’, ‘Inclusive facilities’, ‘Balancing views’, ‘Adapting the electronic staff record’, ‘Policies for staff inclusion’ and ‘Terminology’.

Foreword

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The healthcare sector aims to be inclusive for all, but for all its progress toward inclusivity there are still vulnerable groups of its workforce that are left on the peripheries.

Two successive NHS staff surveys have shown that trans and non-binary people face a disproportionate amount of bullying and harassment from both staff and service users, with trans people being the most likely to face physical violence from not only the people they care for, but their colleagues too.

Healthcare leaders have told us they want the tools and insight necessary to ensure that they can be effective and active allies to their trans and non-binary staff. They understand the urgency needed to ensure that the people they lead are kept safe – and that building inclusive environments that support the most marginalised within their workforce will ultimately improve the working lives of all healthcare staff.

We have appreciated the engagement from members and partners with suggestions about how the guidance could be further clarified. As a result, this updated version integrates additional research and a further legal review to strengthen the guide for practical use.

I am aware that this report comes at a time when public discussion around trans and non-binary identities is heated and divisive. However, we should not forget that every single member of the healthcare workforce deserves a safe and supportive working environment. I hope that this guide goes some way to achieving that.

Matthew Taylor,
Chief Executive, NHS Confederation

Every single member of the healthcare workforce deserves a safe and supportive working environment. I hope that this guide goes some way to achieving that.

The recommendations laid out in this guidance are based on the experiences and practical suggestions of trans and non-binary people. They are intended to support, help and add value to healthcare leaders, and ensure their organisations are inclusive of the needs of trans and non-binary staff and patients.

Co-production is at the heart of this guidance; without trust and collaboration between the NHS Confederation, LGBT Foundation and the 118 trans and non-binary community members across the survey and both focus groups, this work would not have been possible.

Trans and non-binary people make up 0.5 per cent of the population in England and Wales, and yet continue to face unacceptable levels of harassment across society. The NHS in England has a key role to play as a national force for inclusion, through its duty to provide excellent care to all, regardless of their identity.

This guide is designed to be a practical example of what is possible across NHS healthcare organisations to provide as many protections as we can to a marginalised and discriminated population.

We hope that readers will understand that this guidance is provided in good faith and encourage all to approach its recommendations with openness and respect.

Dr Paul Martin OBE,
Chief Executive, LGBT Foundation

We hope that readers will understand that this guidance is provided in good faith and encourage all to approach its recommendations with openness and respect.

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Introduction

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The purpose of this guide is to help healthcare leaders (such as chief executives and chairs), HR directors, those responsible for equality, diversity and inclusion (EDI) work, and LGBTQIA+ staff groups understand the needs of trans and non-binary colleagues, so that they can perform their duties to trans and non-binary staff and provide high-quality allyship for their workforce. It also discusses challenges that may arise as a result of being an ally, and laws to understand in relation to trans and non-binary people's rights.

Research, and the feedback from both healthcare leaders and trans and non-binary NHS employees, has shown a need for standardised guidance across NHS organisations in England. This feedback will be discussed in detail throughout the guide.

To collect information about the specific experiences of trans and non-binary colleagues employed by NHS organisations in England, a qualitative survey was conducted between 14 February and 6 March 2023 and was distributed by the NHS Confederation to various staff networks, and by the British Medical Association using Twitter.

In total, 118 trans and non-binary people employed in a range of different occupations and professions in the NHS in England replied to the survey. Seven responses were removed due to being from people who did not self-define as trans or non-binary.

This survey measured respondents' experiences of inclusion and exclusion at work, workplace incidents deemed to be transphobic in nature and the categories of employee who perpetrate these incidents (ie, senior doctors/colleagues, doctors/colleagues at a similar or lower grade, patients and their relatives, and non-medical staff). It also asked respondents to give feedback on certain types of workplace inclusion initiatives and whether they felt these to be useful, including more visible trans and non-binary role models in their workplace and different types of incident reporting procedures.

Of those who had consented to participate in a focus group to discuss their answers further, a random sample of 25 survey respondents were invited to do so. Focus groups were held on 13 and 17 March 2023, with a turnout of 14 overall.

Who this guide is for

- Chief executives and chairs
- HR directors
- EDI leads
- LGBTQIA+ staff groups

This is an updated version of the report, incorporating further research and legal review following initial publication in June 2023.

Participants were asked to expand on their answers in relation to reporting transphobic incidents at work, seeking help from colleagues, policies and practices that would help to promote trans and non-binary inclusion within the NHS, and adapting the electronic staff record.

The answers provided by the focus groups have been used throughout this guide to provide insight on various topics and concerns.

The survey and focus group findings are referred to throughout as the Trans and Non-Binary Allyship in NHS Organisations survey.

To support the survey's findings, the British Medical Association's (BMA) 2022 Sexual Orientation and Gender Identity in the Medical Profession report has also been used throughout.

How to use this guide

There are different ways to interact with this guidance. You can read the whole text or skip to chapters that are relevant for your job role or responsibilities. At the end of each section is a list of recommended actions; these are also collated at the end of the document.

A glossary of terms can be found in Appendix 1.

While this guidance is intended for healthcare leaders, HR and EDI directors, and LGBTQIA+ staff groups, it is applicable to all staff employed by NHS organisations in England, including community mental health and care professionals. Everyone is responsible for maintaining an inclusive work environment for all.

If you have questions about any of the issues raised in this guidance, you may wish to contact: LGBTQnetwork@nhsconfed.org

This guide has been produced in collaboration with LGBT Foundation. For advice and support on LGBTQIA+ issues, contact 0345 3 30 30 30 or email HELPLINE@lgbt.foundation.

If you have been affected by any of the issues addressed within this guide, you may wish to contact one of the services listed below:

- LGBT Switchboard (national LGBTQIA+ helpline): www.switchboard.lgbt or contact 0800 0119 100
- Galop (national charity for LGBTQIA+ victims of domestic abuse, hate crime or violence): www.galop.org.uk or contact 0800 999 5428
- Mind (national mental health charity): www.mind.org.uk
- Citizen's Advice (national charity for workers and consumer rights): www.citizensadvice.org.uk

Key inequalities faced by trans and non-binary staff

More than half of survey respondents had experienced transphobia at work.

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Research conducted for this guide found that many trans and non-binary staff members employed by NHS organisations experienced transphobia within the workplace.

The Trans and Non-Binary Allyship in NHS Organisations survey found that **55 per cent** of those surveyed reported experiencing **transphobia during employment within the NHS in England**; the most common experiences being 'negative or stereotypical assumptions about your gender identity' (47 per cent), derogatory language (41 per cent) and bullying on the grounds of gender identity (14 per cent).[1]

The most recent NHS Staff Survey showed that 35.3 per cent of trans staff (classified in the survey as 'those with a gender identity not the same as assigned at birth') faced **bullying, harassment and abuse by patients, public or relatives** compared to 27.5 per cent for cis staff (classified in the survey as 'those with a gender identity the same as assigned as birth').

4.8 per cent of trans staff have faced **physical violence at work from managers** compared to 0.7 per cent of cis-gendered staff, while 15 per cent of trans staff have faced **bullying, harassment and abuse by managers** compared to 10 per cent of cis staff.

26.6 per cent of trans staff have faced **bullying, harassment and abuse by colleagues** compared to 18.3 per cent of cis staff.

The BMA's Sexual Orientation and Gender Identity in the Medical Profession report found comparable results, with almost half (49 per cent)[2] of trans and non-binary doctors students experiencing transphobia in their workplace. This included exclusion from the work environment, hostile language, doubts about their professional competence, and at the extreme, threats of violence. Of these experiences, 59 per cent of respondents felt them **serious enough to amount to unlawful discrimination, abuse or harassment**.

Most of these incidents, however, go unreported. Around 70 per cent of trans and non-binary respondents **declined to report their experiences to supervisors**, due to lack of awareness of complaints processes, lack of confidence that the issue would be addressed, fear of repercussions from managers[3] and a lack of basic understanding from colleagues, meaning that discrimination is often not recognised as such.

It is also notable that many expressed fears of having to 'out' themselves to report incidents, as only 34 per cent of trans and non-binary respondents had disclosed their gender history to colleagues (see 'Coming out' in the glossary for more information).[4]

Among cisgender respondents who had witnessed transphobia in their workplace but not reported it, the predominant reason was that they did not feel the incident was serious enough to report. Many also felt that there was a **lack of procedure for reporting incidents perpetrated by patients or their relatives**, or that, where ignorance was the perceived root of the issue, filing a formal complaint would be a disproportionate response.[5]

Trans and non-binary staff reported that the **majority of discriminatory or potentially discriminatory incidents are perpetrated by senior colleagues and patients/relatives**.[6] This Trans and Non-Binary Allyship in NHS Organisations survey found comparable results (see 'Who perpetrates hostility and discrimination against trans and non-binary people?' for more information).

When asked whether transphobia was an issue in their workplace, 84 per cent of trans and non-binary respondents agreed that it was, compared to 49 per cent of cisgender respondents.[7]

Transphobia has a noticeable impact on employee wellbeing, with some trans and non-binary staff **considering leaving due to hostility towards them** (33 per cent).[8] There may also be an unknowable number of staff who have left their position due to transphobia; a number that cannot presently be determined due to lack of data, and the relative unlikelihood that a staff member facing transphobia in the workplace would cite this during their exit interview.

40 per cent believed that their **career had been impacted by transphobia** and reported **impacts on their mental health** as a result, including feeling 'demoralised' and 'distressed'.[9]

There were also significant **disparities in perceived workplace inclusion**, with cisgender participants reporting that their workplace is accepting and inclusive of trans and non-binary people (63 per cent) more often than trans and non-binary people themselves (33 per cent).[10]

Both cisgender and trans people agree that the **healthcare sector has become more inclusive of LGBTQIA+ people in general**, however heterosexual and cisgender people consistently report higher levels of perceived inclusion than LGBTQIA+ people.[11]

Who perpetrates hostility and discrimination against trans and non-binary people?

Results of the Trans and Non-Binary Allyship in NHS Organisations survey found that, according to trans and non-binary NHS staff in England, patients and relatives (33 per cent), non-medical staff (33 per cent) and senior doctors/colleagues (28 per cent) were the most common perpetrators of transphobia in the workplace.[12]

The BMA's 2022 Sexual Orientation and Gender Identity in the Medical Profession report found similar results, with perpetrators of LGBTQIA+ phobia in the workplace, according to LGBTQIA+ staff, most likely to be senior doctors and colleagues (30 per cent), patients and relatives (30 per cent) and non-medical colleagues (19 per cent).[13] This study surveyed doctors and medical students specifically (rather than all staff groups); other staff groups may have different experiences however the similarity between the data is worthy of note.

Heterosexual respondents were less likely to recognise LGBTQIA+ phobia perpetrated by patients and relatives compared to their LGBTQIA+ colleagues by more than 10 per cent, and failed to acknowledge incidents involving senior colleagues by 15 per cent compared to LGBTQIA+ respondents.[14]

It is clear from these results that steps must be taken to ensure all staff are treated with dignity and respect in the workplace, and that creating a more inclusive workplace for trans and non-binary staff must be a priority for healthcare leaders.

Effective allyship

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> “Allyship should always be about material change and uplifting voices.”

What is allyship?

'Ally' has lots of different meanings for different people. Some define an ally as someone outside a minoritised group who uses their position to work with those from minoritised groups to make conditions better.

Some emphasise privilege, stating that an ally is someone who uses their privilege as someone outside of a minoritised group to make conditions better for those inside of that group.

Others still may say that being an ally means learning about and being open minded towards different types of people.

For the purposes of this guide, an ally to trans and non-binary communities is someone who:

- Recognises the privilege afforded to them as a cisgender person and uses this to uplift the voices of trans and non-binary colleagues.
- Recognises and understands the inequalities faced by trans and non-binary colleagues and uses their resources to encourage equity and justice in the workplace and the wider healthcare system.
- Educates themselves about typical trans and non-binary workplace experiences, understanding that trans and non-binary colleagues and staff are not responsible for their learning.
- Defends the rights of trans and non-binary colleagues and staff, even when this is hard.
- Understands the intersectional nature of allyship, and the impact of being multiply marginalised as a trans or non-binary colleague or staff member.

An ally recognises the privilege afforded to them as a cisgender person and uses this to uplift the voices of trans and non-binary colleagues.

People who are heterosexual and cisgender are often able to bring their authentic self to work or interact with services like the NHS without fear of differential treatment on the basis of their sexual orientation or gender identity. These are benefits that trans and non-binary people do not have, which we might also call privilege.

An ally can leverage this particular type of privilege to uplift the voices, experience and expertise of trans and non-binary people by creating opportunities to actively include them.

Examples of using this privilege in the workplace might include (among others):[15, 16, 17]

- Hiring trans and non-binary inclusion experts to help healthcare leaders implement effective trans and non-binary equality within NHS organisations.
- Challenging colleagues who are bullying or harassing about trans and non-binary people's identities; this is a key measure of adopting a zero-tolerance policy against abuse and harassment.
- Asking trans and non-binary colleagues whether they need company when reporting incidents.
- Checking in on the wellbeing of trans and non-binary colleagues if they have recently faced transphobia at work.
- Ensuring that job opportunities and promotions are not contingent on an employee's ability to travel using a passport or identity documents.
- Ensuring that trans and non-binary employees from a different country are given access to their healthcare rights when starting at a new workplace.

The privilege afforded to cisgender people does not mean that they do not experience hardship or discrimination. For example, a disabled cisgender woman from a racially minoritised background may face challenges due to ableism, sexism and racism, but it would not be related to being cisgender. A transgender person without similar lived identities may not face discrimination the same way that a cisgender person would, but they may still face discrimination and hardship due to their transgender identity.

An ally recognises the privilege afforded to them as a cisgender person and uses this to uplift the voices of trans and non-binary colleagues.

An ally recognises and understands the inequalities faced by trans and non-binary colleagues and uses their resources to encourage equity, diversity and justice in the workplace and the wider healthcare system.

Trans and non-binary people face inequalities in many different spaces; being disproportionately affected by hate crime and poverty, struggling to access healthcare (both related and unrelated to gender identity), and facing higher rates of bullying in school and employment. Mental health difficulties are a common issue, and many trans and non-binary people struggle to access adequate wellbeing support, leading to higher rates of self-harm and suicide.[18]

People who are not heterosexual or cisgender and are therefore not able to access certain services or be authentically themselves may face specific issues navigating the workplace. These can include:

- Needing to justify or explain one's sexual orientation or gender identity to colleagues or patients.
- Experiencing bullying or harassment at work or in public because of one's gender identity.
  - Many women, both cis and trans, experience misogynistic bullying or harassment on the grounds of their female gender identity, however trans and non-binary people may also experience bullying and harassment due to their trans status.
- Having one's rights be the subject of public and political debate, which may be reflected in workplace conversations.
- Worrying about personal safety when using the bathroom at work (trans and non-binary people have higher rates of urinary tract infections due to feeling unsafe and therefore avoiding using the toilet in public spaces including at work)[19]
- Fewer employment or promotion opportunities and fear of discrimination from managers or colleagues. Trans and non-binary staff are also regularly paid less than their trans and non-binary counterparts.[20]

An effective workplace advocate understands these issues and the solutions that can make a difference. They use their time, energy, emotional labour and money to work towards these solutions, recognising that trans and non-binary staff members may need to protect their own resources to survive, and therefore do not always have capacity to give anything back into campaigning for equity (see 'Equity' in the glossary for more information) and justice. Healthcare leaders should promote allyship without centring themselves, giving cisgender people the spotlight, or seeking to be congratulated.

Healthcare leaders should promote allyship without centring themselves, giving cisgender people the spotlight, or seeking to be congratulated.

An ally educates themselves about typical trans and non-binary workplace experiences, understanding that trans and non-binary colleagues and staff are not responsible for their learning.

An effective workplace ally learns about trans and non-binary experiences both in and outside of work. This learning goes beyond the basic issues and inequalities, and includes trans and non-binary culture, language, history, art, conceptions of self and community.

Understanding that their trans and non-binary colleagues and staff should not be expected to educate them about cultural experiences, an effective workplace advocate instead seeks out this knowledge from trainers, teachers, creators, authors and culture leaders, and where possible, ensures they are paid for their time and energy.

An ally defends the rights of trans and non-binary colleagues and staff, even when this is hard.

There will be times when the wrong thing is said, a misguided opinion is expressed, or deep harm is caused by misjudged policies or practices. An effective workplace ally understands that these experiences do not define them or the organisation, and instead are to be learned from.

A workplace advocate does not act defensively when they are called in (see 'Called in' in the glossary for more information) or confronted about their actions by trans and non-binary colleagues and staff. They should instead actively listen and learn from what they are being told; this should be seen as a constructive learning experience, even if it might involve discomfort.

There may also be times when trans and non-binary policy and inclusion work raises uncomfortable questions about one's own identity or place in society. An effective ally can sit with their discomfort and seek to understand why they feel this way.

An ally understands the intersectional nature of allyship, and the impact of being multiply minoritised as a trans or non-binary colleague or staff member.

Race, disability and socio-economic status and other factors can intersect with trans or non-binary identity to further minoritise vulnerable people. For a workplace ally to be effective, they need to advocate and support all minoritise communities, and understand how racism, ableism, sexism and poverty can affect experiences of transphobia, and the opportunities afforded to trans and non-binary colleagues and staff.

An effective workplace ally learns about trans and non-binary experiences both in and outside of work.

Why are allies important?

In the 2021 England and Wales Census, at least 0.5 per cent of the population disclosed that the gender they identify with is not the same as the sex they were assigned at birth. Although this figure is likely to underrepresent the actual number of gender diverse people living in England and Wales,* it is undeniable that trans and non-binary people are a minority of the population at large.

The relatively small size of trans and non-binary communities, and the discrimination faced by many, means that promoting equity and justice is difficult without the support of cisgender people, particularly leaders, managers and those in positions of power.

What do trans and non-binary people want from allies?

Many suggestions came from the Trans and Non-Binary Allyship in NHS Organisations survey and focus groups.

These can be grouped into two areas: allyship behaviours that individual staff members are responsible for and wider strategies that healthcare leaders, HR and EDI directors and LGBTQIA+ staff networks should strive for.

In the 2021 England and Wales Census, at least 0.5 per cent of the population disclosed that the gender they identify with is not the same as the sex they were assigned at birth.

*The 2021 England and Wales Census asked 'Is the gender you identify with the same as the sex you were assigned at birth?'. The size of the trans and non-binary population captured by this question is likely to be smaller than the actual population, due to a variety of factors, including parents completing the survey on behalf of their children, who may not be 'out' at home, trans and non-binary people boycotting the question due to disagreements with the wording of the question, or not feeling that their data would be handled sensitively. Additionally, the wording of the question and the rhetoric around gender identity and the census from media may have given some trans and non-binary people the impression they were ineligible to answer 'yes' without a formal diagnosis of 'gender incongruence.'

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Individual allyship behaviours

- Making an active effort to **ask for and use the correct name and pronouns for staff and patients**. One focus group attendee disclosed that "(I) was the only person to introduce myself with pronouns. Everyone turned and stared... (it was as if) I was speaking a different language".
- Making an active effort to **use appropriately gendered language** with both staff and patients.
  - There are instances in which gender-neutral language is acceptable to use, particularly when addressing large groups, or in situations where gender is irrelevant. An example of this could be addressing a room of patients with 'good afternoon, everyone' instead of 'good afternoon, ladies and gentlemen'.
  - Gender-inclusive language should be used in circumstances where gender is relevant, or the use of gender-neutral language may be confusing or feel like someone's gender identity is being ignored or erased. This is best for talking about services or situations that may affect different types of people. For example, you might say 'women and trans and non-binary people may need to access maternity services', rather than 'women may need to access maternity services'.
  - When addressing patients or staff who you know to use specific language to talk about themselves, this should be used. For example, if you know a patient calls themselves woman, you should do the same.
- Having a **basic understanding of trans and non-binary identities**, and not expecting trans and non-binary colleagues to provide this education, unless they have been specifically commissioned to do so.
- **Listening and acknowledging when trans and non-binary colleagues raise issues in the workplace**. Many of those surveyed indicated that their complaints were dismissed or not taken seriously, because their line manager did not believe the complaint to be serious enough. Workplace allies need to trust trans and non-binary colleagues to tell them what is and is not acceptable behaviour. When issues are raised, they should be taken seriously and responded to appropriately. One focus group attendee reflected, "intent never outweighs harm".
- Actively **challenging transphobia at work**, even when trans and non-binary staff and colleagues are not present and doing so without the expectation of praise after the fact.
- **Extending allyship to trans and non-binary patients** as well as members of staff.

Many of those surveyed indicated that their complaints were dismissed or not taken seriously, because their line manager did not believe the complaint to be serious enough.

Organisational inclusion strategies

- **Visibly including trans and non-binary people and references to LGBTQIA+ identities across the organisation**. Examples of this may include rainbow and pronoun badges, progress pride flags in offices, trans and non-binary staff visible on job advertisements or promotional materials and clear signposting for trans and non-binary patients. One focus group attendee said "...on the first day, seeing that (pride flag) was something of a relief even if I still wasn't comfortable coming out as non-binary to colleagues. Such a small gesture felt so valuable".
- **Demonstrating allyship by actively including trans and non-binary people in important meetings, projects and initiatives**, alongside colleagues with other protected characteristics and paying them for their time and expertise when this is unrelated meaningfully to their job role. As one focus group attendee stated, "allyship should always be about material change and uplifting voices". It is also important to sponsor the voice of trans and non-binary people in these circumstances; "to have senior people call you the expert... means so much and lends so much respect that wouldn't otherwise be given".
- **Highlighting exemplary organisations specifically for their excellent inclusion work** for trans and non-binary staff and patients.

Allyship recommendations

- Invest in trans and non-binary awareness training that will provide staff with information about the experiences of trans and non-binary colleagues, and how cisgender people can provide support.
- Advocate for all minoritised communities, with the understanding that racism, ableism, sexism and poverty can affect and compound experiences of transphobia.
- Promote behaviours that can help trans and non-binary colleagues, such as asking for names and pronouns, using gender neutral and gender inclusive language, having a basic understanding of trans and non-binary identities, listening to trans and non-binary colleagues when they raise workplace issues.
- Promote organisational allyship strategies that can help trans and non-binary colleagues, including having clear signposting to LGBTQA+ organisations, seeking opportunities to include trans and non-binary people in important projects and initiatives, alongside colleagues with other protected characteristics and highlighting examples of excellent trans and non-binary inclusion work.

Tackling transphobia

In this section

“I want colleagues to treat me like they would any other guy.”

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One of the most important things a workplace allyship leader can do is confront transphobic views and behaviours in their own workplace. This might mean challenging a colleague or staff member who expresses a discriminatory opinion, helping a trans or non-binary co-worker complain about transphobia they have endured, or encouraging senior managers to implement more cohesive anti-discrimination policies.

It is important for allies to speak up about the transphobia they witness at work for several reasons:

- Trans and non-binary staff might not always feel safe reporting these incidents due to fear of further transphobia or punitive actions that might be taken against them
- Trans and non-binary staff are not always believed about their experiences of discrimination when they do report them to managers or make a complaint.
- Discrimination against trans and non-binary staff members can happen so frequently that reporting each incident could be overly burdensome.
- Reliving the incident through reporting might be upsetting.

Workplace allies can support their trans and non-binary colleagues and staff by taking on this work.

What to do when witnessing or being told about transphobia at work

The Trans and Non-Binary Allyship in NHS Organisations survey found that trans and non-binary staff who had experienced transphobia in their workplace would favour **'conversation with an independent workplace advocate'** (44 per cent), 'quiet space' (36 per cent) and a **'conversation with their manager'** (32 per cent)[21] as potential support options. These ideas were expanded upon during two focus group sessions.

During these, attendees spoke of the importance of listening to the needs of the staff member targeted by transphobia and offering solutions such as helping to report the incident, with the understanding that the person being targeted should be in control of making any decisions about next steps to be taken.

One of the most important things a workplace allyship leader can do is confront transphobic views and behaviours in their own workplace.

Where transphobia occurs without a trans or non-binary colleague present themselves, focus group attendees felt it was **important for cis colleagues to confront this behaviour** regardless. This includes instances of misgendering directed at a staff member who is not physically present; attendees wished allies would correct colleagues in these circumstances.

It was also felt that inclusion of this kind needed to be **implemented at every level of seniority within NHS organisations**. To promote a workplace culture in which everyone is valued, a zero-tolerance attitude needs to be promoted and upheld by management, senior healthcare leaders and HR directors first and foremost. This includes developing a clear zero-tolerance statement supported by a suitable escalation policy.

Recognition was also expressed that, at a managerial level, trans and non-binary inclusion (as with any inclusion of those with any marginalised identities) **stops being allyship and is simply part of the job**.

In terms of pastoral care following an incident, this was felt by focus group attendees to be important, but **not at the cost of an effective resolution being found**. One individual shared a situation in which their colleague faced transphobic abuse from another co-worker and was given a leave of absence to mitigate the stress that this incident caused. However, the abuse itself was not dealt with, and the offending employee did not face any consequences, and so upon the trans colleague's return, the abuse restarted.

Another attendee spoke about being offered therapy following a transphobic incident, however, the therapy service offered was not competent in trans and non-binary inclusion and therefore compounded the experience of facing transphobia.

These examples highlight how pastoral support, while feeling like a solution, may allow managers and other responsible individuals to avoid dealing with the root of the issue.

To promote a workplace culture in which everyone is valued, a zero-tolerance attitude needs to be promoted and upheld by management, senior healthcare leaders and HR directors first and foremost.

Helping trans and non-binary people report incidents

Focus group attendees felt that **helping to report incidents of potential discrimination** was a key way for managers to help trans and non-binary colleagues. This requires colleagues to understand the reporting process and have a basic understanding of trans and non-binary identities. This knowledge is vital to avoid further 'fatiguing' the targeted co-worker by having them explain how their colleague should help them.

It was also considered **vital that healthcare leaders understand the differences between protected beliefs and discrimination** to allow for effective reporting of incidents, and clear consequences for offending employees (see 'Gender critical beliefs in the workplace' for more information).

While reporting potential discrimination, and co-workers' assistance with this was felt to be important, it was acknowledged that **individuals were more likely to feel comfortable reporting in an organisation that is already inclusive of trans and non-binary colleagues**, as reporting largely relies on management to enact a solution. Where there is little confidence in one's managers, marginalised employees are unlikely to speak up.

For this reason, it was suggested that **Freedom to Speak Up Guardians be trained to handle complaints relating to transphobia** (research has been unable to find any mandatory or optional training already offered on this subject), and for an anonymous reporting system to be explored. Anonymous reporting may present challenges for accountability on an individual level but may highlight wider organisational issues that can be tackled holistically.

Where the organisational structures are not in place for this type of reporting, in some primary care settings for example, **organisations should look to come together at a system level to share resources to support all staff**, including trans and non-binary people, by creating a system-wide Freedom to Speak Up Guardian. In this instance, concerns should be recorded to avoid them getting lost through informal reporting channels. At this system level, senior leaders could also consider creating a general practice LGBTQ+ group for all concerns to be escalated to.

Where there is little confidence in one's managers, marginalised employees are unlikely to speak up.

If the incident involves another member of staff or a patient who is present

- In this circumstance, the most important factor to consider is the safety of the trans or non-binary staff member or patient. If they are being physically attacked or threatened with violence, the perpetrator should be removed from the space and if necessary, security or police should be contacted.
- If the perpetrator is being verbally abusive, attempt to stop them from continuing by calmly, but firmly, informing them that their comments are inappropriate and that they will not be tolerated. If they continue, they should be removed from the space.
- Consider the wellbeing of the trans or non-binary staff member or patient throughout the encounter. As soon as possible, speak privately and ask how they are feeling and if there is any emotional support that can be provided. Often, the answer will be no, so do not be offended if this is the case – in many instances, an individual will want to carry on with their day as normal, so try not to keep bringing it up if this is unnecessary.
- Support the trans or non-binary staff member or patient to file a complaint if they wish.
- It may be possible to deal with the incident informally by discussing with the perpetrator why they said what they did and why they felt it was appropriate. This should be done in private in a calm, neutral space.
- In this instance, ask whether the staff member or patient targeted by the incident would like to be involved in this conversation, and if they do not, what involvement they would like. This should include an option for no involvement. You may also wish to signpost relevant support organisations, and any relevant union representative.
- Report the comments to a manager or support the staff member to report if there are concerns. Be clear about whether the trans or non- binary staff member or patient who was being targeted is aware, as they may later be implicated in the complaints process if escalation is necessary.

For more information about incidents involving patients and relatives, see ‘When patients request treatment from same-sex staff’ and ‘Transphobia from patients or relatives’ sections.

= Practical steps that can be taken

If the incident involves another member of staff or patient but they are not present

- In this instance, attempt to stop any verbal abuse by calmly, but firmly, informing them that their comments are inappropriate and that they will not be tolerated.
- Do not inform the trans or non-binary staff member or patient that they were being talked about in this way unless this is necessary. Consider the benefit of informing them versus the consequences for their emotional wellbeing.
- It may be possible to deal with the incident informally by discussing with the perpetrator why they said what they did and why they felt it was appropriate. This should be done in private in a calm, neutral space.
- In this instance, if the trans or non-binary staff member or patient has been informed, ask whether they would like to be involved in this conversation, and if they do not wish to, what involvement they would like. This should include an option for no involvement. You may also wish to signpost relevant support organisations, and the organisation's union representative.
- Report the comments to a manager if there are concerns. Be clear about whether the trans or non-binary staff member or patient who was being targeted knows, as they may later be implicated in the complaints process if escalation is necessary.

= Practical steps that can be taken

If the incident targets trans and non-binary people in general

- In this instance, it is important to balance the rights of the individual to have opinions that may be considered offensive, with the rights of trans or non-binary staff members and patients not to be subject to harassment.
- If a colleague or member of staff makes comments about trans and non-binary people in general, that may be considered offensive, it may be best to set personal boundaries with the person by changing the topic of discussion or reminding them that it may not be appropriate to discuss this topic in the workplace.
- If a patient or family member makes offensive comments and encourages conversation about trans and non-binary people in a derogatory manner, calmly assert that this is not appropriate venue for such discussion.

Note
Remember there is no hierarchy among protected characteristics (ie one protected characteristic is not more important than another) and beliefs or cultural views do not justify less favourable treatment or the harassment of trans and non-binary employees or patients.

For more information on this, see ‘Gender critical beliefs in the workplace’.

= Practical steps that can be taken

Bystander training

Being an active bystander means intervening when unacceptable behaviour is being exhibited with the intention of stopping the interaction and supporting the target of the behaviour.

Active bystanders can help prevent discrimination and harassment by providing allyship to the person being targeted.

The general principles of bystander intervention are:

- **Assessing for safety** – personal safety should be a priority at all times. If it is unsafe to intervene alone, consider whether a group response would be better, or call someone more senior.
- **Responding to the targeted person's needs** – try not to draw unnecessary attention to the person being targeted. Discreetly ask if they need help, and only act according to their wishes.

Many organisations provide bystander training, which can be beneficial in reducing LGBTQ+ phobic discrimination, as well as incidents of racism, ableism and sexism.

Managers should be encouraged to invest in bystander training as an effective tool for combatting discrimination and harassment of all kinds in the workplace.

Tackling transphobia recommendations

- Promote and uphold a zero-tolerance attitude towards transphobia in the workplace by
  1. Challenging transphobic behaviours (including misgendering) from colleagues and patients, especially when trans and non-binary colleagues are not present themselves.
  2. Understanding that trans and non-binary staff might not be able to confront transphobia alone, due to fear of victimisation if incidents are reported or not being believed about their experiences.
  3. Helping trans and non-binary colleagues deal with incidents of transphobia by ensuring that the needs of the colleague are listened to and respected at all times.
- Ensure appropriate pastoral care is available following transphobic incidents.
- Ensure that your organisational reporting system allows for and accommodates the reporting of transphobia and other forms of discrimination
- Provide trans and non-binary awareness training for Freedom to Speak Up Guardians, so that they can support colleagues through the reporting process competently.
- Invest in active bystander training for all employees.

Risks of voicing support for trans and non-binary inclusion

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> To have senior people call you the expert lends respect that wouldn't otherwise be given."

It is sometimes appropriate for healthcare leaders, particularly chief executives and chairs, to publicly discuss trans and non-binary policies and work. This could be in celebration of diversity dates such as Pride and Trans Day of Visibility. It might also be in response to a question they have received, or in relation to work that they are proud of and want to promote on social media, such as a new policy or piece of research.

People who are not in favour of some or all aspects of trans and non-binary inclusion may respond to these discussions in ways that can feel hostile, threatening or intimidating, particularly on social media. It may also feel like the organisation itself is being threatened.

This risk should not prevent public support for trans and non-binary inclusion, but it does require careful consideration of what to say, especially online.

The NHS provides good care for all people, including trans and non-binary people. Public expression of beliefs about trans and non-binary people that may feel hostile, or intimidating does not change the duty that the NHS has to deliver this care.

Stick to the facts

When making public-facing statements or social media posts, ensure all of the relevant facts are known to a reasonable degree of confidence, and that the content posted is factually accurate. As a rule, consider whether the facts being stated would be upheld as such in court.

This will make it harder for people who do not welcome the expressed inclusion of trans and non-binary people to criticise and spread misinformation. It will also provide the poster with a reputation as someone who can be trusted by trans and non-binary people to provide factual details.

It is sometimes appropriate for healthcare leaders, particularly chief executives and chairs, to publicly discuss trans and non-binary policies and work.

Consider whether to reply

It can be tempting to reply to negative tweets and other social media comments. However, this may have the effect of spreading negativity further and exposing more people to hateful content. Consider carefully whether there is value to be added to the conversation, and whether the commenter is acting in good faith, or simply wants to argue.

Avoid harassment

When replying, avoid posting anything that could be considered harassing or objectionable. Name calling and accusations can become escalated into harassment allegations and potentially libel and could result in legal action being taken.

Consider the risks of sharing information

Bad faith actors (which may include, but is not limited to, people who are only engaging to distract from a wider conversation or people who are intentionally trolling – see 'Trolling' in the glossary for more information) may try to use online and social media profiles to collect information that may be used to target persons offline at home or at their place of work. Where possible, when involved in public-facing work of this nature, avoid listing personal details such as location or job title in publicly available places.

In some instances, content posted on personal social media accounts may be connected to professional or organisational accounts, and reputation damage to the individual or organisation may occur as a result. Carefully consider whether any content being posted has the potential to be controversial, inflammatory or misrepresented by others, even on personal or private social media accounts.

Ensure that any online or public-facing statements do not directly tag or name individuals where possible, as they may be targeted due to their involvement.

Carefully consider whether any content being posted has the potential to be controversial, inflammatory or misrepresented by others, even on personal or private social media accounts.

When facing strong backlash to visible allyship, it may feel intense and overwhelming in the moment, but will often pass quickly. For support dealing with online harassment, Cybersmile provides useful information about reputation management.

Seeing content online that is transphobic, discriminatory or hostile may have a negative effect on anyone's mental health. For information about staying safe online, please refer to LGBT Foundation's Digital Self Harm Guide.

While there are risks to consider when supporting trans inclusion, particularly online, trans and non-binary staff will often value the positive impact of seeing their employer visibly include them.

Inclusion risks recommendations

- Carefully consider any public facing statements about work related to trans and non-binary staff or patients before they are published.
- Ensure statements are as factually accurate as possible and consider removing information that cannot be verified to a reasonable degree of confidence.
- On social media, consider whether it is appropriate to reply to messages that may be negative, hostile, or spreading misinformation.
- On social media, avoid statements that may be considered harassing or accusatory.
- When engaged in public facing work relating to trans and non-binary issues, do not list personal details such as location or job title in publicly available places, including the personal details of others.
- Understand where to get support when facing backlash to visible allyship.
- Develop an organisational policy line about trans and non-binary inclusion that is visible on organisation websites and clearly communicated to staff. Staff will be expected to adhere to this while representing the NHS as its employee.

Trans and non-binary inclusive employment

In this section

53 per cent of survey participants believe their trans or non-binary status has impacted career progression.

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Inclusive recruitment processes

Trans and non-binary people can struggle to find suitable job opportunities with employers they trust not to discriminate against them due to their gender identity. According to polling from Total Jobs, 33 per cent of trans and non-binary people surveyed reported discrimination in job applications and interviews,[22] with another 2018 survey suggesting that 43 per cent of employers polled would be 'unsure' about hiring a trans or non-binary person.[23]

Inequality of opportunity is also apparent, with 53 per cent of those surveyed believing that their trans or non-binary status had impacted their career progression.[24]

For this reason, NHS organisations should strive to make their recruitment processes as inclusive to trans and non-binary people as possible. We know most HR directors will have worked hard to ensure their recruitment practices are inclusive, the insight below is intended to be an additive to these.

Accessible language in job listings

When posting employment opportunities on internal NHS job boards or external recruitment portals, it is important to consider the wording of the advertisement, supporting documents and application pack.

Trans and non-binary applicants are likely to be perceptive about language that may accidently or intentionally exclude them and may prevent them from applying due to fear of transphobia in the recruitment process.

Trans and non-binary people can struggle to find suitable job opportunities with employers they trust not to discriminate against them due to their gender identity.

When writing job listings and application packs, HR directors should ensure that:

- Gender-inclusive language is used.
- Relevant skills are emphasised, rather than specific experience, wherever possible. To do this, carefully consider what exactly the job role will require.
  - This exercise can be valuable for trans and non-binary applicants (as well as applicants from other marginalised communities), as it allows for a wider range of work experience to be relevant, and lowers the application criteria, but not necessary the quality of applicants.
  - For example, a job listing for a GP receptionist might require the applicant to have 'two years' work experience as a receptionist'. An applicant that has the transferrable skills needed to be a receptionist (such as answering the telephone, note taking, appointment scheduling etc), but no specific work experience as a receptionist, may be prevented from applying, even though they would be qualified for the role.
  - This is important, because trans and non-binary people often have skills and work experiences in hospitality and the voluntary sector, rather than professional sectors that are often required for career progression. This may be due to employment discrimination preventing access to work in certain professional sectors or a lack of formal qualifications (due to leaving education early) providing a barrier to entry.[25]

Trans and non-binary people often have skills and work experiences in hospitality and the voluntary sector, rather than professional sectors that are often required for career progression. This may be due to employment discrimination.

When writing job listings and application packs, HR directors should ensure that:

- State a commitment to an inclusive recruitment process and workplace for all, including specific reference to those with protected characteristics.
- Where possible, include positive representations of trans and non-binary staff members on recruitment materials. This could be employee images (with consent) or statements from trans and non-binary people about the workplace or job roles.
- Where named people are referenced in relation to the recruitment process, ensure that their pronouns are also listed, if they wish.
- Ensure that trans and non-binary applicants have the option of disclosing whether their referee(s) might know them under a different name or pronoun, so that they are not accidentally outed when contacting their referee(s). This is best done by providing a HR contact trained in inclusive recruitment processes that applicants can contact if they wish to address concerns on an individual basis.
- Ensure that applicants can record their gender accurately if they wish to do so by providing more options than male or female, and including 'prefer not to say' (see 'Demographic monitoring' for more information).
- Provide space on application forms for applicants to give their pronouns, if they wish.
- Consider also hiring trans and non-binary inclusion experts to help design accessible and inclusive job listings.

Where possible, include positive representations of trans and non-binary staff members on recruitment materials.

Accessible interviews

The interview process can be daunting for anyone, but particularly people from marginalised and minoritised communities. Applicants may be fearful of being judged unfairly by recruitment panels due to a particular protected characteristic or may worry about being asked inappropriate questions.

For trans and non-binary applicants, interview panels can be intimidating. If they are visibly transgender, applicants may be concerned that the panel will react with hostility or even be discriminatory due to their appearance. Even for trans and non-binary people who can be 'stealth' or 'pass' (see the glossary for more information), identity documents may reflect old names, or have a different gender marker than expected.

Ensuring interviews are inclusive begins before the interview itself commences. Important preparations that HR directors should consider include:

- **Allowing applicants to prepare for the interview by giving them access to the questions beforehand when possible**. This may seem counterintuitive, as it is common in recruitment for questions to be withheld prior to the interview. Allowing applicants to sufficiently prepare with the questions to be asked can help autistic and neurodiverse people to express themselves with more clarity and remove unnecessary stress.[26, 27]
  - Trans and non-binary people are between three and six times more likely to be autistic or otherwise neurodiverse[28]. This is a good example of intersectionality in action – in which a practice that helps one group also benefits another (See 'Intersectionality' in the glossary for more information).
- **Ensuring that the interview space will include a private room in which applicants can change clothes if needed**.
  - This is beneficial as it allows trans and non-binary people to travel in different clothing and change on arrival. This might be important for personal safety when using public transport, or for comfort reasons.
- **Give applicants detailed instructions about the interview process**, including the layout of the building, sensory information (such as the normal noise level of the building, light levels etc), where the bathrooms/changing rooms are and if they are gender neutral and the format of the interview itself, including how long each section is due to last. The more detailed these instructions can be, the better.[29]

The interview process can be daunting for anyone, but particularly people from marginalised and minoritised communities.

To make interviews more accessible for trans and non-binary applicants:

- Have panellists introduce themselves and their pronouns to the applicant and ask them to confirm their name and pronouns before beginning the interview. Consider providing pronoun stickers or badges on arrival.
- Do not make inappropriate assumptions about an applicant's gender identity or their professional competence based on their appearance.
  - It is normally important for applicants to dress appropriately for an interview, which often means wearing formalwear. This can be a significant barrier for many trans and non-binary people, as finding well-fitting formalwear can be hard and often expensive. Where possible, panellists should account for this in their assessment of each applicant.
- Use gender neutral and gender inclusive language throughout the interview.
- Encourage applicants to include examples of their work experience that might come from unconventional sources, such as community activism or volunteering.
- Consider having trained equality and diversity representatives present during the interview.

Career progression

Trans and non-binary staff report facing barriers to career progression.[30] This may be due to lack of professional experience, having few allies in their team to advocate for their progression, lack of self-confidence, not wanting to upset the status quo, exclusion from professional networks and hostile work environments.[31]

To ensure that trans and non-binary people can progress their careers in the same way as their peers, it may be useful to ensure managers have conversations with their staff about their career ambitions, with the intention of setting professional development goals for the employee to complete to help achieve them. It may also be useful to ensure that workplace mentors are trained in trans and non-binary inclusion and consider (and attempt to mitigate) the key barriers that may be preventing trans and non-binary staff from progressing in their careers.

Demographic monitoring

Organisation leaders will know that monitoring of demographic information is good practice for designing more inclusive workplaces.

Under section 149 of the Equality Act 2010 (applicable in England, Scotland and Wales), public authorities such as NHS organisations are required to comply with the Public Sector Equality Duty (2011) (see 'Public Sector Equality Duty (2011)' for more information). Actively monitoring employee demographic information can be evidence of compliance with the duty.

The way demographic data is captured can often be barrier for trans and non-binary people if it fails to accurately and sensitively reflect their identity, and in the absence of a gender identity monitoring standard, organisations should consider the following example as good practice techniques for capturing data:

Which of the following options best describes how you think of yourself?

Female

Male

Non-binary

In another way (Please state)

Prefer not to say

Is your gender identity the same as that you were assigned at birth?

Yes

No

Prefer not to say

This two-part monitoring is preferable to trying to include trans options in the first question as it avoids harmful stereotypes and allows for people who might use different terminology (for example, third gender instead of transgender) to accurately disclose their gender identity not being the same as the one assigned at birth.

At present, the electronic staff record (ESR) does not allow for monitoring of trans identity or the recording of non-binary identities. See 'Adapting the electronic staff record' for more information on the ESR.

Gender Recognition Act and data protection law

The UK GDPR (the main source of data protection law) requires that information about people is used fairly, lawfully, in line with people's expectations, and proportionately (i.e. obtained, used or shared, only where necessary). For a full explanation of responsibilities under the UK GDPR, refer to the data protection policy produced by your organisation, or speak to your data protection officer.

Section 22 of the Data Protection Act 2018 affords additional protection to trans people *if* they have a Gender Recognition Certificate (see 'Gender Recognition Certificate' in the glossary for more information), or if they have sent their application but not yet received their certificate.

In this instance, it is illegal for protected information, which is information which concerns a person's gender history or trans status or their application for a Gender Recognition Certificate, to be shared without consent by any individual or organisation who has obtained the information in an official capacity, with the main exceptions of legal and social security investigations.

'Official capacity' refers to information obtained or shared internally or externally with other organisations, in a work capacity (as an employer or commissioner or provider of healthcare services) or from/with members of the general public, including inadvertent disclosure.

Breaches of Section 22 are dealt with by the police, and punishable by a criminal record and an unlimited fine.

Under the UK GDPR, certain data breaches need to be reported to the Information Commissioner and to the affected individuals. For NHS organisations this is typically done via the Data Security and Protection Toolkit. For assistance reporting a UK GDPR breach, individuals should speak to their employer's Data Protection Officer. Individuals affected by a data breach can contact Galop for more information: Galop – Trans Privacy Law.

Inclusive employment recommendations

- Ensure that the language used in job listings is gender and gender inclusive and emphasises relevant skills. Include pronouns with any named individuals mentioned in recruitment materials.
- To make interviews more accessible, where possible, give interviewees the questions beforehand, ensure space will be available for applicants to change clothes if needed, and provide a detailed description of the interview process.
- Ensure that demographic monitoring forms are inclusive of trans and non-binary people by using best practice guidance.
- Ensure there are no breaches of the protections afforded to trans and non-binary people with a Gender Recognition Certificate under the Data Protection Act 2018.
- Ensure that managers discuss career progression goals with all employees and encourage related professional development.
- Provide workplace mentors with trans and non-binary awareness training, including information about relevant career progression barriers.

Policies for staff inclusion

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> Such a small gesture felt so valuable.”

It is important that trans and non-binary inclusion does not end once an employee has been successfully hired. There are many policies that can promote an inclusive workplace for trans and non-binary employees.

When asked how NHS organisations could improve inclusion for trans and non-binary employees, Trans and Non-Binary Allyship in NHS Organisations survey respondents and focus group attendees both highlighted the **importance of diversity training**. It was felt that this should be mandatory, and while the basics of gender identity should be universally taught, the rest of the training given should vary by job role, to facilitate appropriate patient inclusion.

For example, pregnancy or maternity care professionals should receive training on trans and non-binary experiences of pregnancy and maternity services, while reception and administrative staff may benefit from more in-depth information about name and detail changes appropriate to their role and system access privileges.

Some felt that it would be particularly helpful to have training directed from a national-level body such as the government or NHS England to help ensure standardisation across all organisations but all recognised that political barriers may inhibit this approach.

Using gender neutral and gender-inclusive language as standard practice for both patients and colleagues was agreed upon as a beneficial step, as were gender neutral facilities and uniforms.

Some expressed frustration that, where single cubicle toilets were available in their organisation, these were still labelled as gender specific, despite meeting requirements to be gender neutral.

Focus group attendees emphasised that **gender-neutral facilities**, such as staff bathrooms, changing and locker rooms should not replace all facilities, but rather should **be available as another option alongside male or female**.

Similar opinions were expressed about staff uniforms; where gender neutral or unisex clothing was unavailable, all staff, cis or trans, should be offered a choice of which uniform they feel most comfortable wearing.

It is important that trans and non-binary inclusion does not end once an employee has been successfully hired.

The need for demonstratable actions in support of trans and non-binary staff was apparent throughout both focus groups, with attendees highlighting a more diverse range of communications and marketing that visibly includes trans and non-binary people as an example of this.

It was felt by some, however, that this may appear tokenistic without being used alongside a consistent organisational policy line citing the NHS's commitment to trans and non-binary inclusion for staff and patients. This was also felt to be useful for respective organisation communications teams, as it may be used as a standard response to any queries about the intention of trans and non-binary inclusion work.

In respect of communications more generally, it was considered a useful measure to **implement media training specifically on equality and diversity topics for healthcare leaders likely to be spotlighted by news or social media**. This would ensure a consistent and robust ability to ground and support any work being done in the future.

Staff networks were generally agreed to be useful, however many expressed a desire to have protected time to attend these meetings, as often managers did not prioritise employee attendance. At other times, staffing shortages meant that employees were unable to attend regular meetings.

Some focus group and survey respondents emphasised the **lack of trans and non-binary staff employed at senior levels across NHS organisations as a key issue**, stating that "trans and non-binary people have (expert skills) ... that the NHS need. (We) often work way above our pay grade and CV and should be promoted and rewarded (for it)". Another respondent agreed, "having (trans and non-binary) staff in high places is incredible, it feels like unspoken support".

Where promotion of this kind is not possible, respondents wanted to be compensated for the additional work they have undertaken by developing trans and non-binary training and policies for their organisation.

Specific policies that can help promote trans and non-binary workplace inclusion include policies on EDI, transitioning in the workplace and LGBTQIA+ inclusion.

Some focus group and survey respondents emphasised the lack of trans and non-binary staff employed at senior levels across NHS organisations as a key issue, stating that "trans and non-binary people have (expert skills) ... that the NHS need.

Equality and diversity policy

HR directors and EDI staff should regularly review their organisation's equality and diversity policies (in collaboration with staff side representatives) to ensure that they are inclusive of all staff. To ensure effective trans and non-binary inclusion, the following points should be considered within this policy:

- Definitions of the nine protected characteristics of the Equality Act 2010 (see 'Equality Act 2010' for more information) that are legally sound and community informed.
- Information about what the organisation will do to minimise barriers to inclusion for trans and non-binary staff members.
- A clear and transparent complaints procedure for reporting transphobic incidents, including examples of unacceptable behaviour and the consequences for the offending employee.
- The contact details of the EDI lead in the organisation. This provides accountability for any incidents and gives anyone with suggestions a clear point of contact for having their voice heard.
- Review dates for the policy that are realistic and achievable. Trans and non-binary equality and diversity is changing rapidly – terms and definitions are flexible and are constantly being updated by communities. For this reason, HR directors and EDI staff should aim to review the EDI policy every two years.

HR directors and EDI staff should regularly review their organisation's equality and diversity policies (in collaboration with staff side representatives) to ensure that they are inclusive of all staff.

Transitioning in the workplace

Transitioning in the workplace policies can help trans and non-binary colleagues navigate transition while maintaining a publicly visible role, and fielding questions from colleagues and patients.

Several NHS trusts already have transitioning in the workplace policies, which are good examples of best practice. These include:

- Leeds Community Healthcare NHS Trust – Transitioning in the workplace policy
- NHS Blood and Transplant – Transitioning at work policy
- Birmingham and Solihull Mental Health NHS Foundation Trust – Trans and non-binary equality policy for employees

An effective policy should include:

- Reference to the protections that trans and non-binary employees have under the law. This will include the Equality Act 2010, data protection law and the Gender Recognition Act (GRA) 2004 (see 'What the law says' for more information).
  - Reference the GRA in this policy but make clear that obtaining a Gender Recognition Certificate (see 'Gender Recognition Act' for more information) is not a requirement for changing a name and ID via deed poll. Changing name via deed poll is not legally necessary: a name can just be changed by the choice of the individual and will not be a barrier to living authentically in the workplace. HR systems such as the electronic staff record can be updated without the employee undergoing the GRC process.
- Contact details for the HR lead on this policy and the training they have received. Ideally, the person in charge of delivering this policy will have received extensive awareness training about trans and non-binary workplace inclusion, be well versed with appropriate terminology and sensitive in their approach.

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An effective policy should include:

- A clear process beginning from the point of disclosure until a) the employee requests the process ends or b) the employee leaves the organisation, in which the employee will be supported in their transition journey. This will be the process to be followed by the employee and their manager to:
  - inform their team of the new name and pronoun details
  - update relevant HR records
  - source new ID/name badges
  - update name and gender information on IT systems. This will commonly include email addresses and MS Teams screen names.
  - implement relevant training and provide ongoing pastoral support for the employee.

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This process will be different for every employee and require a great degree of sensitivity and flexibility on the part of management and HR.

An effective policy should include:

- This process should be as flexible as possible and led by the trans or non-binary employee. The process should include a discussion with management to facilitate an agreement (such agreement not to be unreasonably withheld) of how to proceed There may be certain times of day, for example, where there are greater pressures on service delivery, and if possible, this should be taken into consideration and any time off work arranged around those times. Key here is an open discussion between management and the individual who is transitioning to allow for planning where possible.
  - For instance, an employee might wish for their manager to help draft an email explaining a change in pronouns and gender presentation to be sent to their team, and wish for no further assistance, in which case the process can be ended.
  - Another employee may wish for regular meetings with their manager to discuss ongoing changes and accommodations during their medical transition.
  - Note that if an employee changes their gender, their employer will need to tell HM Revenue and Customs (HMRC) and make sure the employee is paying the right National Insurance contributions – see What to do if an employee changes gender.
  - This process will be different for every employee and require a great degree of sensitivity and flexibility on the part of management and HR.

LGBTQIA+ inclusion policy

A robust equality and diversity policy, while necessary, is a minimum step to take in terms of trans and non-binary inclusivity. To go further, an LGBTQIA+ inclusion policy is good practice to ensure that the key differences and challenges faced by LGBTQIA+ colleagues are recognised and addressed. Ideally, this will sit alongside a similar policy related to disability inclusion and racial inclusion.

An LGBTQIA+ inclusion policy should ideally include:

- A reminder of the Equality Act 2010 and a definition of the protected characteristics of sexuality and gender reassignment (see 'Gender reassignment' for more information).
- Definitions of the four types of discrimination (see 'Equality Act 2010' for more information), examples of each in relation to sexuality and gender identity and the employment consequences of discrimination for the perpetrator.
- A personal guarantee from senior leadership that they are committed to LGBTQIA+ equality in the organisation.
- Data about how many LGBTQIA+ staff the organisation employs, based on voluntary demographic monitoring questions with a commitment to monitor pay and career progression gaps, as well as staff satisfaction.
  - An exception may be necessary if the organisation employs a relatively small number of staff, as this may risk 'outing' people by association without their consent. Refer to NHS Digital's Data Quality Maturity Index (DQMI) methodology – Suppression Rules.
- LGBTQIA+ diversity dates the organisation will commit to celebrating and how these will be celebrated.
- A commitment that any employee benefits will specifically incorporate LGBTQIA+ inclusion.
- A policy that where there are opportunities or business needs to travel to or work in locations that criminalise LGBTQIA+ identities or activity, employees should be given the opportunity to opt out with any career impact minimised, or if they choose to travel, they should be briefed on the potential risks.

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An LGBTQIA+ inclusion policy should include:

- Information about LGBTQIA+ groups that the organisation partners with to ensure their policies and procedures are aligned with their commitment to LGBTQIA+ inclusion.
- A discussion of intersectionality. LGBTQIA+ employees are likely to identify with more than one protected characteristic and may face further marginalisation because of this. Demonstrating understanding of the differences presented by being LGBTQIA+ and black, or LGBTQIA+ and disabled for example, is good practice, and can help employees understand different identities to a greater extent.
- Information about the transitioning in the workplace policy (see 'Transitioning in the workplace' for more information).
- A commitment to maintaining an inclusive dress code. Confirm that employees are free to wear the uniform or workplace attire that best reflects their gender identity.
- A commitment to investing in training about LGBTQIA+ issues in the workplace, and when this training was last undertaken.
- Information about the LGBTQIA+ staff network.
- The contact details of the person in charge of writing and maintaining the LGBTQIA+ inclusion policy, clarifying that employees can contact this person for suggestions. It may be appropriate to name the organisation's HR director as the policy owner, to reflect both the importance of the policy, and protect staff who may be subject to hostility by their association to the policy.

Demonstrating understanding of the differences presented by being LGBTQIA+ and black, or LGBTQIA+ and disabled for example, is good practice, and can help employees understand different identities to a greater extent.

Inclusive staff policy recommendations:

- Implement mandatory training about trans and non-binary inclusion, which, where possible, is tailored to the specific job role of those being taught.
- Use gender neutral and gender inclusive language as standard when addressing staff.
- Make gender neutral facilities available where possible.
- Invest in media training for senior leaders likely to be spotlighted by news or social media.
- Ensure that colleagues have protected time and to attend staff network meetings, and that the network has an executive sponsor.
- Ensure that the organisation has trans-inclusive equality and diversity, transitioning in the workplace and LGBTQIA+ inclusion policies.

Adapting the electronic staff record (ESR)

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“If we’re not counted, we don’t count.”

Many in the Trans and Non-Binary Allyship in NHS Organisations survey expressed significant frustration with the insufficient gender options on the ESR. Focus group attendees wanted gender options that extend beyond male or female, with the option of 'non-binary' as a minimum requirement. One individual concluded that, in an organisation as big as the NHS, "if we're not counted, we don't count", and therefore trans and non-binary employees were being excluded from staff demographic information.

Some felt that the ESR should replicate the demographic information captured in staff surveys, which does include more gender options than male and female.

There was also concern that administrative and IT staff were providing inconsistent messaging about the paperwork required to change certain details and the rationale behind decisions to refuse to do so. This was causing the process of changing details to be overly burdensome. It was felt that staff were asking inappropriate questions of trans and non-binary staff members or asking for 'proof' of certain detail changes where this was legally unnecessary (see 'What the law' says for more information).

Some respondents expressed incredulity that the details used to populate their name displayed on email addresses and ID cards seemed to be linked to their bank account listed on the payroll, and therefore the two could not be different. One person discussed an incident in which it had taken two years to change their NHS email address for this reason.

Many suggested that these issues may be solved or mitigated by implementing a self-service option, in which staff are able to change their own honorific, name and gender. This would also alleviate the need to involve multiple members of staff to permit changes where an individual may feel uncomfortable about disclosing this information.

Attendees also felt it ironic that, despite gender options outside of male and female not being available on the ESR, the gender-neutral honorific 'Mx' is.

The groups also expressed a desire for a field for pronouns to be added to the ESR, ID cards and name badges, and that patient's pronouns should be clear on their records. They felt that this option should be available for all individuals.

Staff can amend their own ESR profiles through Employee Self Service, including 'preferred first name' if this is different to their legal name. For a change of legal first name, legally adequate documentary evidence has to be shown to a supervisor and verified.

Many in the Trans and Non-Binary Allyship in NHS Organisations survey expressed significant frustration with the insufficient gender options on the ESR.

MS Teams, currently used by NHS England and many NHS organisations as a tool to communicate with staff and stakeholders, now allows users to display their pronouns. Organisations should activate this feature and encourage staff to make their pronouns visible. More information on how staff can amend their Teams profile can be found on Microsoft.com. More information for administrators on how to activate this feature can also be found on the Microsoft website.

Frustrations were expressed in relation to the recording of patient details. A specific example given was the use of Rio for electronic patient record management, which can capture pronoun information, but was not used by most colleagues.

Interestingly, trans employees who were older, held more senior positions, joined the NHS post-transition and had binary identities were less likely to report issues with the ESR than younger, less senior staff transitioning within their workplace. Those with non-binary identities indicated more frustration with the current ESR system than those with binary trans identities.

It is worth noting that the ESR has been used to change or update name details following an employee's marriage since its inception; allowing trans and non-binary staff to update their details needn't require a different approach but can use the same process. Additionally, allowing a self-service model in which staff update their own details will benefit not only trans and non-binary people but employees wishing to change their name in line with their relationship status or for other reasons.

Adapting the ESR recommendations

- Ensure administrative and IT staff are given correct and consistent information about updating ESR records on behalf of colleagues.
- Support staff to access Employee Self Service and update their own ESR profiles
- Add pronouns to staff ID cards and name badges.
- Encourage timely review of the Unified Information Standard for Protected Characteristics (UISPC) and timely implementation of its changes.

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The NHS Business Services Authority (NHS BSA) is keen to enhance the recording of protected characteristics within ESR. At the time of writing, any additions and changes were currently on hold pending the outcome of the Unified Information Standard for Protected Characteristics (UISPC) review being conducted by NHS England at the request of the Department of Health and Social Care (DHSC). When complete, NHS England will be responsible for publishing any new data requirements after which systems, such as ESR, will be required to make any necessary changes within an agreed timeframe. (These changes would apply to all relevant patient and workforce systems across the NHS, not just ESR.) Any changes made to systems before the UISPC is published would be at a very high risk of becoming non-compliant, requiring further changes, which is why the ESR team has waited to implement changes.

Requests for employees to be able to change their names and gender (where a Gender Recognition Certificate has not been obtained), and for non-binary gender options to be made available, are currently constrained by the need for ESR to comply with legislation and NHS policy in relation to, for example, NHS Employers' Identity checks standard, HMRC's Tax and National Insurance Contribution legislation, NHS Pension Scheme rules, and the statutory requirement for Gender Pay Gap Monitoring.

For more information on the NHS England's work regarding the UISPC see 'updated equality objective 3' at https://www.england.nhs.uk/about/equality/objectives-for-22-23-and-23-24/.

What the law says

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The Equality Act 2010 makes it unlawful to discriminate against anyone because of a protected characteristic.

Equality Act 2010

The Equality Act 2010 (applicable in England, Scotland and Wales) makes it unlawful to discriminate against anyone because of a protected characteristic. There are nine protected characteristics as defined by the Act: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Importantly, 'gender reassignment', although used by the Equality Act 2010 to refer to trans and non-binary people, is an outdated term no longer widely used by trans and non-binary communities. The Women and Equalities Committee has called on the government to amend this language to 'gender identity'[32] (see 'Gender reassignment' in the glossary for more information).

The definition of 'gender reassignment', in the context of the Equality Act 2010, is a broad, and is applicable to non-binary people, as well as people who have not yet transitioned (see 'Transition' in the glossary for more information) but intend to do so in the future.

The Act also uses 'transsexual' to refer to people with the protected characteristic of 'gender reassignment'. Transsexual is widely accepted as an outdated and potentially offensive term (see 'Transsexual' in the glossary for more information).

Section 7 of the Equality Act states that:

"(1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

(2) A reference to a transsexual person is a reference to a person who has the protected characteristic of gender reassignment.

(3) In relation to the protected characteristic of gender reassignment—

(a) a reference to a person who has a particular protected characteristic is a reference to a transsexual person;

(b) a reference to persons who share a protected characteristic is a reference to transsexual persons.[33]"

'Gender reassignment', although used by the Equality Act to refer to trans and non-binary people, is an outdated term no longer widely used by trans and non-binary communities.

The Act and existing case law make clear that a person has the protected characteristic of 'gender reassignment' if they:

1. Intend to transition (even if they have not yet started this process)
2. Are in the process of transitioning
3. Have completed their transition
4. Are cis but are perceived by others to be in any of the above categories.

Non-binary and genderfluid people are protected by the Act if they meet the above criteria[34].

Note: a trans person does not have to tell anyone of their gender identity or the status of an application for a gender recognition certificate in order to be protected, and individuals do not need to undergo (or plan to undergo) medical procedures or take medication in order to benefit from protection.

It is unlawful to discriminate against anyone with the protected characteristic of gender reassignment, with some limited exceptions in relation to single-sex spaces and genuine occupational requirements (see 'single-sex spaces' for more information).

There are four types of discrimination as defined by the Equality Act 2010:

1. **Direct discrimination** – being treated differently and worse than someone else due to a protected characteristic.
2. **Indirect discrimination** – when a policy, practice or rule is applied to all equally but affects some worse due to a protected characteristic and is not a proportionate means of achieving a legitimate aim.
3. **Harassment** – behaviour targeting a protected characteristic that creates an intimidating, hostile, degrading, humiliating or offensive environment.
4. **Victimisation** – being treated badly because of a discrimination complaint.

Section 16 of the Equality Act states that absences from work due to health appointments relating to transition related healthcare must be treated as any other health-related absence from work.

It is illegal to discriminate against anyone with the protected characteristic of gender reassignment, with some limited exceptions in relation to single sex spaces and genuine occupational requirements.

Public Sector Equality Duty (2011)

Under section 149 of the Equality Act, public authorities (such as NHS bodies) are required, in the exercise of their functions, to have due regard to the need to:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.'

This applies in the context of trans and non-binary inclusion, because it necessitates NHS organisations to have due regard to eliminating discrimination against trans and non-binary people both working for and using NHS services (as well as to other protected characteristics).

Gender Recognition Act 2004 (GRA)

The Gender Recognition Act 2004 enables trans people to obtain a gender recognition certificate, which allows for the issuance of an amended birth certificate; sex would change from female to male or male to female for all legal purposes.

Trans people who have migrated to the UK, including seeking asylum and refuge, and staying in the UK for a limited period on a work or study visa can apply for legal gender recognition in the UK using the either the standard or overseas gender recognition certificate application, depending on their circumstances. This can be used to change sex on a visa or other documents such as asylum seekers' temporary leave to remain documents.

If a person has changed their gender legally in another country that is approved by the UK government[35] and wish to have this recognised on their UK documents, they can apply for a gender recognition certificate using the overseas track. Persons with legal gender recognition from a country not approved by the UK government may apply for a gender recognition certificate using the standard application.

The Gender Recognition Act does not recognise non-binary gender identities recorded in another country on birth certificates or on any other record, like HMRC tax and national insurance records. This is because the UK government does not recognise non-binary genders legally.

It is important to respect a trans and/or non-binary person's gender identity regardless of whether they have a Gender Recognition Certificate or not.

Data protection law: UK GDPR

Data protection law requires that organisations only obtain, use and share personal data only where necessary and proportionate, fairly, and with good reason. This applies in particular to sensitive information, and for many trans or non-binary people, their gender `history' or transgender status will be sensitive. Generally, a person's information should only be used or shared with the knowledge of the individual to whom it relates, and often with their agreement. Examples of where such agreement may not be appropriate is sharing information for pensions, as part of the provision of counselling services or legal claims.

A person's trans status may be important information to obtain depending on the service in question, however there are very few instances in which this information should be shared without the person's knowledge or agreement

Personal data must be kept secure, for instance by encryption or protected with a password, and should be `kept for no longer than is necessary'. The more sensitive information is, the higher the degree of protection which should be applied.[36]

If a person has changed their gender legally in another country that is approved by the UK government and wish to have this recognised on their UK documents, they can apply for a gender recognition certificate using the overseas track.

Data protection law applies to all kinds of personal data and includes everybody, and trans and non-binary people's data needs to be appropriately protected by organisations, even if they do not have a Gender Recognition Certificate.

Any service that breaches data protection law may face regulatory sanction and/or civil claims, and individuals who illegally obtain or share personal data can be prosecuted.

This applies in the context of trans and non-binary inclusion as staff should be aware of the legal implications of unnecessarily or inadvertently sharing an individual's data with other colleagues or organisations, or patients.

Any service that breaches data protection law may face regulatory sanction and/or civil claims, and individuals who illegally obtain or share personal data can be prosecuted.

Freedom of Information Act 2000 (FOIA)

The Freedom of Information Act 2000 ensures that the public can access information held by public authorities (such as the NHS), by obligating the publishing of certain information and allowing the public to request specific information from such organisations.

This applies in the context of trans and non-binary inclusion as staff may have to respond to FOIA requests from people wanting information about NHS policies or arrangements relating to trans and non-binary staff and patients (see 'Freedom of Information Act (FOIA) requests' for more information).

Recommendations

- Ensure that all employees understand their duties under the Equality Act 2010, the Public Sector Equality Duty (2011), the Gender Recognition Act 2004, data protection and freedom of information law.

Inclusive facilities

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> “Many of my trans/non-binary colleagues have been excluded from changing areas.”

Bathroom and shower facilities

In all types of workplaces, trans and non-binary people should be supported to use the bathrooms they feel most comfortable using. At no time is it appropriate to force staff to use the toilet associated with their assigned sex at birth against their will.

Trans and non-binary people do not need to have 'completed' any transition or have Gender Recognition Certificate or deed poll to access the bathroom facilities of their choice.

In workplaces in which shower facilities are provided for staff, private shower cubicles should be provided where possible as a matter of course. Trans and non-binary staff should be asked which facilities they feel most comfortable using and supported to do so.

Trans and/or non-binary people may be unable to use open, single sex shower facilities, depending on their own comfort and safety, the wishes of others and their ability to be perceived as a cisgender person. These circumstances should be decided on a case-by-case basis, and the trans and/or non-binary person's wishes considered.

Where use of open shower facilities is deemed inappropriate or unsafe for the trans and/or non-binary person, alternative arrangements must be provided.

It is also important for employers to be aware that concerns may be raised by some employees about sharing bathroom and shower facilities with trans or non-binary employees. Employers must be conscious of their obligations under the Equality Act 2010 in respect of all protected characteristics and appreciate that there may be a conflict between these protected characteristics on occasions in the workplace. These conflicts should be resolved in a way that doesn't show preference for one protected characteristic over another and seeks to ensure that trans and non-binary staff are not caused distress in accessing facilities which align with their gender identity.

In assessing the provision of bathroom and shower facilities, all protected characteristics should be considered and we recommend the involvement of staff groups and networks for input. Equality impact assessments are a useful means by which organisations can take a thorough approach to assessing the impact of their decisions in the context of equality and support the NHS to meet its Public Sector Equality Duty (2011) under the Equality Act 2010.

Examples

A non-binary staff member working in a residential care facility does not feel comfortable using the female or male staff toilets. They share this with their manager, who suggests that they use the disabled toilet instead. The non-binary employee accepts this as an adjustment and continues to the disabled toilet following this conversation.

A patient staying at the residential facility questions why the non-binary staff member uses the disabled toilet, and as their manager does not know if they have consent to share their gender identity with patients, explains to them that their employee feels more comfortable using this toilet, and that they (and anyone else) have the right to do so.

A female member of staff who has medically transitioned needs to shower at the end of her shift. She feels unsafe using the women's showers because other women know her trans status and have made belittling comments in the past. As using the men's showers would be unsafe and inappropriate, she requests use of a private cubicle in which to shower. Her manager, recognising the nuance of the situation, allows this.

If there are no private shower facilities available, the manager may consider other accommodations that could be made, such as negotiating a time in which the trans employee can shower during which other staff agree not to enter.

When patients request treatment from same-sex staff

Healthcare organisations owe duties to both patients as a service provider or commissioner, and staff as an employer. Organisations will need to plan for and respond to situations where (a) the healthcare needs of trans patients, and those who hold gender critical beliefs, need to be addressed; and (b) situations where an organisation employing a trans or non-binary staff member is responsible for the care of a patient who states that they only want to be treated or cared for by a person of the same sex who is not transgender. The approach taken to such a request will depend on the treatment or care to be provided and the availability of other staff members but organisations should always be mindful of the difficult working environment created for a trans employee by such a request and the legal duty to protect the health and safety of its staff.

The range of attitudes to care being provided by staff members with particular protected characteristics have changed over time and continue to change. Healthcare organisations should bear in mind that although the proportion of trans and non-binary staff members in the health service and wider population is increasing, it is still a relatively small part of the general population. For some patients, receiving healthcare services may be the first time they have met or spent an extended amount of time with a trans or non-binary person. In many situations patients will simply want the best quality care and the gender identity of the staff member will not be a relevant consideration for the patient or their family members. However, developing a policy and training for staff, and supporting trans and non-binary staff throughout their transition and beyond will be helpful in addressing potential conflicting views or other harder-to-manage situations. Decisions should always be taken on a case-by-case basis.

Responding to requests from patients and their family members for care from clinicians of a particular sex or gender

By their nature, a patient seeking healthcare treatment will be unwell and in a position of potential vulnerability. Healthcare providers in England regulated by CQC (a) specifically must treat patients with dignity and respect; and (b) must have regard to the Equality Act 2010 protected characteristics of the service user (under Regulation 10 of the Health and Care Act 2008 (Regulated Activities) Regulations 2014). This would include the protected characteristics of sex, gender reassignment, and religious or philosophical beliefs referenced elsewhere in this guidance.

In some cases seeking to accommodate a patient's request that care or treatment is given by a clinician (or chaperone) of a specific sex may be particularly appropriate. Examples of this could be genital examinations or provision of intimate care, where a patient might be more likely to request a staff member of the same sex. A patient might also request a staff member with or without a particular protected characteristic to mitigate potential psychological impact.

Although a patient may express a view or preference on who provides care or treatment (and a patient can refuse to consent to treatment for any reason if they have capacity to do so), ordinarily patients do not have a right to demand particular treatments, that treatment is provided in a particular way, or that their care is (or is not) provided by any specific member of staff or group. In situations where a patient's preferences cannot be accommodated (for instance because of unavailability of staff) this should be explained to the patient, together with the implications of continuing to refuse treatment.

There are some situations where being particularly sensitive to the needs or views of patients based on sex and/or gender identity are specifically referenced in legislation or statutory Codes of Practice. For instance, the Mental Health Act Code of Practice (to which providers and commissioners of services for patients detained under the Mental Health Act 1983 need to have regard) makes specific reference to the potential need to take account of the needs of patients and staff based on both sex-based characteristics and trans and non-binary status.

General Medical Services or Personal Medical Services (for GP services) allow a patient to express a preference to receive services from "a particular performer [i.e. doctor] or class of performer either generally or in relation to any particular condition". This is commonly interpreted as a right to ask to be seen by a clinician of a particular gender/sex. The practice "must endeavour to comply with any reasonable preference". Reasonable preference' could include the examples outlined above.

The provisions of Schedule 3 of the Equality Act provide for certain limited circumstances in which separate- or single sex services can be provided as part of the NHS.[37]

If a patient complains about being treated or cared for by a person who they perceive to be trans or of a different sex or gender to their preference, this must be handled sensitively. While the patient may be showing distress, the impact on the member of staff should also be acknowledged and taken seriously.

Managing trans and non-binary workers where the patient wishes to be cared for by clinicians of a particular sex

In the vast majority of healthcare roles, gender identity will not be a relevant consideration in specifying which members of staff should undertake a particular task or role. There are likely to be extremely few circumstances in which refusing, generally, to employ a trans or non-binary person in a particular role would be legally upheld.

Schedule 9, Part 1 of the Equality Act 2010 provides that where there is an occupational requirement for an employee to have a particular protected characteristic, an employer is allowed to legally directly discriminate to accommodate this requirement in employing someone with that protected characteristic. Schedule 9 also permits an employer to state that there is an occupational requirement that the person is not "transsexual" – the term used in the Equality Act 2010 (see Glossary).

However, the occupational requirement must be well evidenced and documented. The requirement must not be a sham or pretext, there must be a link between the requirement and the job, and it must be a proportionate means of achieving a legitimate aim. Such lawful restrictions are rare.

For employment purposes, guidance from the British Medical Association supports the view that a trans person's assigned sex at birth is irrelevant to their working life. For this reason, they conclude that a patient has no right to be told a healthcare worker's assigned sex at birth.

When a patient requests care (not-) to be provided either by a woman or a man or a particular member of staff, the needs and safety of both staff and patient should be considered. If a trans or non-binary staff member is assigned to provide care, they should be made aware of the patient's request, and given the choice of whether they feel comfortable treating or caring for the patient.

If they feel safe fulfilling care and presenting in a particular gender towards said patient, this is acceptable, however they should not be forced to deliver care if this would cause undue distress or invalidate their lived experience of gender.

It may be that the trans or non-binary staff member no longer feels safe treating the patient (or the employer reasonably determines this to be the case based on a risk assessment), under which circumstances, another member of staff should be assigned to the patient (in smaller care settings this may require staff to temporarily complete clinical duties outside their usual role), and the trans or non-binary worker given appropriate pastoral support.

The patient has no specific right to be told that the particular person treating them is trans or non-binary, and providing this information to the patient without the knowledge of the staff member concerned or in a way which is unfair to the staff member would run a high risk of a breach of data protection law (see 'Trans and non-binary inclusive employment').

Issues are more likely to arise if the trans member of staff does not 'pass' as cisgender.

Examples

A non-binary therapist is scheduled to work with a female patient. The patient expresses discomfort at being seen by someone who is not visibly female, and requests to be seen by a woman instead. The non-binary therapist and their manager decide that, as the employee is not female and does not feel comfortable being perceived as such, another therapist should be assigned to the patient. The patient is informed that they will have to wait longer to be seen if they choose to decline care from the non-binary therapist, to which the patient agrees.

A female nurse who is not trans but has a masculine gender presentation is assigned to perform a routine examination of a female patient, who has requested a female nurse. The practice has advised the patient that they cannot guarantee that patient requests can be met. The patient expresses discomfort at being treated by someone who they perceive to be a trans woman, even though she is not. The patient has no grounds to be told the nurse's assigned sex at birth or (non) transgender status and this is explained to the patient.

The nurse, who is asked by her manager if she feels comfortable continuing the examination, consents to continue, however the patient refuses and uses derogatory language. The patient is told that such derogatory behaviour will not be tolerated, and informed that as there are no other staff available, the appointment will need to be rebooked for another time, provided the patient agrees to treat all staff with dignity and respect in the future. She is reminded that any further derogatory behaviour may result in her discharge from the medical practice.

Inclusive facilities recommendations

- Understand the circumstances in which a person may be excluded from a single sex space and be prepared to implement this while ensuring dignity and respect for those involved.
- Support trans and non-binary people to use the facilities they feel most comfortable using, while taking into account the views of others concerning their use of these facilities.
- Understand the circumstances in which a person can request treatment or care from a different member of staff and be prepared to follow this guidance with dignity and respect for those involved.
- Allow trans and non-binary staff to make decisions (where possible) about their own boundaries when treating and caring for patients who may be hostile regarding their gender identity.

Balancing views

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All staff should enjoy a workplace free from discrimination and harassment.

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Transphobia from patients or relatives

As is described in 'Inclusive facilities', although patients may ask to receive care from staff members with particular protected characteristics, it may not be possible or appropriate to accommodate their request.

Patients or relatives should be informed of their right to receive care elsewhere, including moving to a different residential facility if necessary.

As is evidenced in 'Key inequalities faced by trans and non-binary staff', many trans NHS staff have experienced aggression, transphobia or abuse from patients or relatives. Whilst a patient is free to hold particular views about sex and gender, if this translates into inappropriate behaviour towards staff, the employing organisation will need to take steps to address this.

Employers must take steps to ensure that all staff can enjoy a workplace free from discrimination and harassment, both because of legal obligations under health and safety law and Equality law, and because it is the right thing to do. This includes harassment or aggression from patients, residents and their relatives.

Reasonable steps include visible messages that harassment will not be tolerated, having accessible procedures for staff to complain or log incidents of abuse, having a zero-tolerance policy against violence which includes discriminatory behaviour, providing training for staff about dealing with incidents, including bystander training, and providing appropriate pastoral support following an incident[39] (see 'Tackling transphobia').

Providers could also consider sending a formal letter to the patient informing them of the organisation's zero tolerance approach to abuse and discrimination.

If a patient or relative repeatedly behaves in a particular way to an employee because of their trans or non-binary status, and in doing so the behaviour is intended to cause (or has the effect of causing) alarm, harassment or distress, this may be considered harassment for the purposes of the Protection for Harassment Act. It could be discrimination against the staff member for an organisation to tolerate the behaviour of patient or relatives in this circumstance.

Relatives or guardians who are violent, aggressive, or causing a nuisance may be removed from the healthcare premises. The police can be called to assist with this. There is a specific offence of assault against emergency workers (including NHS staff more generally), and in many areas 'Operation Cavell', a police initiative, exists to pursue those who assault NHS staff.

If the discrimination or harassment displayed by a patient or relative is due to an underlying condition, they should still be challenged on their behaviour if considered clinically appropriate, and incidents should still be documented. Encourage flexibility among the workforce to facilitate cis staff to care for the patient including asking staff to temporarily complete clinical duties outside their usual role.

It is possible for a healthcare provider to refuse to provide care or treatment if it is unsafe or unable to do so. In circumstances where a patient has health needs which cannot be met by a healthcare provider because of the patient's (or their relative's) transphobic behavior, the commissioner of the healthcare service should be notified.

In some care settings, particularly primary care, receiving care elsewhere might not be possible, in these circumstances a note should be placed on the patient's record so that they are not seen by the same member of staff again, this will also give reception staff the knowledge to book a different member of staff to see the patient in future though this should be done in a way that does not risk inadvertently outing any member of staff to their colleagues. Colleagues should work flexibly to accommodate this including (where safe and appropriate) completing clinical duties outside their usual role.

The colleague being targeted should be treated with respect and dignity by colleagues assisting them and should be given appropriate wellbeing support following an incident. If they no longer wish to treat or care for the patient or interact with relatives, this should be accommodated as far as reasonably possible.

If a trans or non-binary staff member wishes, they may be moved instead of the patient (either to a different department or facility, where possible), but this should only be explored at the staff member's request or with their involvement.

Gender critical beliefs in the workplace

The 2021 legal ruling of Forstater vs CGD Europe found that gender critical beliefs (see 'Gender critical' in the glossary for more information) are protected beliefs under Section 10 of the Equality Act 2010.

This means that people have the legal right to hold and express these beliefs and are entitled not to be treated less favourably, harassed or victimised because of them. This does not mean that they can express or act on these views in the workplace in a way that bullies, belittles or demeans trans and non-binary people.

The ruling also goes on to state that, 'those with gender critical beliefs (cannot) misgender trans persons with impunity'[40]. The harassment provisions of the Equality Act 2010 will be relevant and apply to the protected characteristic of gender reassignment. Employers should be mindful that where a member of staff engages in unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. This might be considered harassment under the Equality Act 2010 if it is reasonable that the conduct could have the effect complained of.[41]

The Employment Appeal Tribunal, in its judgment, was keen to emphasise that the existence of opposing gender critical beliefs and trans identities does not negate the rights of the other. In terms of dignity at work, tolerance and respect should be shown by all employees to each other at all times.

Freedom of Information Act (FOIA) requests

People may request any information held by a 'public authority', which includes ICBs, NHS Trusts and Foundation Trusts, and most other NHS organisations.

Freedom of Information Act requests cannot be used by individuals to access their own data. This would be done via a subject access request. More information on subject access requests is available on the Information Commissioner's Office website.

This could include requests for information about trans and non-binary specific services or policies implemented by NHS England or by individual NHS organisations.

In certain instances, a request submitted under the Freedom of Information Act will be considered vexatious under the language of the Act.[42] These requests can be refused. Obviously vexatious requests are rare, and in most circumstances, careful judgement will be applied in deciding whether a request should be dismissed on vexatious grounds. Generally, if a request would be overly burdensome to reply to, lacks serious value in the public interest, is motivated by an intention to disrupt a service or is harassing or distressing, it may be rejected under Section 14(1).Certain groups may attempt to disrupt services through a campaign of FOIA requests. These may be deemed vexatious only if there is sufficient evidence linking them. It should also be noted that differentiation must be made between a campaign of disruption vs a campaign seeking information. Additionally, if public pressure or debate relating to a particular subject is sufficiently high, multiple, unrelated FOIA requests may be made independent of one another.

In cases of disruption, this may be differentiated from seeking legitimate information by the submission of multiple identical or very similar requests received within a very short window of time. It may also include specific reference to the intent to disrupt on websites associated with individuals or organisations making the request.

Requests may also be refused:

1. Because they will take too long to deal with (typically more than 18 hours to find and locate the information requested);
2. Because they ask about (or would release information about) specific individuals where it would not be fair, necessary or lawful to do so (for example, a request asking about a specific member of staff or patient);
3. Because the information was obtained in confidence by the public body holding it;
4. Because disclosure would be likely to prejudice the free and frank provision of advice, free and frank exchange of views for the purposes of deliberation, or would otherwise be likely to prejudice the effective conduct of public affairs.
5. Because the disclosure would be likely to prejudice the health or safety of any person.

For more information on FOIA requests, see Freedom of information and Environmental Information Regulations.

Balancing views recommendations

- Produce and display visible inclusion messages in patient areas including that harassment will not be tolerated.
- Ensure processes for reporting incidents from patients are accessible to and understood by staff.
- Provide training for staff about how to respond to hostility from patients.
- Provide appropriate pastoral support for staff who have been targeted by harassment from patients.
- Ensure that staff understand the differences between unlawful discrimination and protected beliefs and the appropriate ways to respond to each.
- Ensure that staff likely to deal with FOIA requests understand the differences between subject access requests and Freedom of Information Act requests.
- Ensure that clear guidance is given to staff handling FOIA requests, so they can identify those that are likely to be vexatious or which request information which is exempt from disclosure.

Ensure that staff understand the differences between illegal discrimination and protected beliefs and the appropriate ways to respond to each.

Recommendations

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Individual behaviours for staff

- Advocate for all minoritised communities, with the understanding that racism, ableism, sexism and poverty can affect and compound experiences of transphobia.
- Promote and uphold a zero-tolerance attitude towards transphobia in the workplace by:
    1. Challenging transphobic behaviours (including misgendering) from colleagues and patients, especially when trans and non-binary colleagues are not present themselves.
    2. Understanding that trans and non-binary staff might not be able to confront transphobia alone, due to fear of victimisation if incidents are reported or not being believed about their experiences.
    3. Helping trans and non-binary colleagues deal with incidents of transphobia by ensuring that the needs of the colleague are listened to, and managers respond appropriately by taking a holistic and objective approach and take steps to prevent trans and non-binary staff from being subjected to intimating, hostile, humiliating or offensive behaviour in the workplace.
- Ensure that public-facing statements about trans and non-binary inclusion are as factually accurate as possible and consider removing information that cannot be verified to a reasonable degree of confidence.
- On social media, consider whether it is appropriate to reply to messages that may be negative, hostile, or spreading misinformation, and avoid statements that may be considered harassing or accusatory.
- When engaged in public-facing work relating to trans and non-binary issues, do not list personal details such as location or job title in publicly available places, including the personal details of others.
- Understand where to get support when facing backlash to visible allyship (such as from supportive healthcare leaders, third sector organisations and others).
- Use gender neutral and gender inclusive language as standard when addressing staff.
- Complete trans and non-binary awareness training that is relevant to job role.
- Ensure that duties under the Equality Act 2010, the Public Sector Equality Duty (2011), the Gender Recognition Act 2004, data protection laws and the Freedom of Information Act 2000 are understood in relation to job role.

Ensure that public facing statements about trans and non-binary inclusion are as factually accurate as possible and consider removing information that cannot be verified to a reasonable degree of confidence.

- Understand the circumstances in which a person may be excluded from a single-sex space and be prepared to implement this while ensuring dignity and respect for those involved.
- Support trans and non-binary people to use the facilities they feel most comfortable using.
- Understand the circumstances in which a person can request treatment from a different member of staff and be prepared to follow this guidance with dignity and respect for those involved.
- Allow trans and non-binary colleagues to make decisions (where possible) about their own boundaries when treating patients who may be hostile about their gender identity.

Structural recommendations for organisations

- Invest in trans and non-binary awareness training that will provide staff with information about the experiences of trans and non-binary colleagues, and how cisgender people can provide support.
- Promote behaviours that can help trans and non-binary colleagues, such as asking for names and pronouns, using gender neutral and gender inclusive language, having a basic understanding of trans and non-binary identities, listening to trans and non-binary colleagues when they raise workplace issues.
- Promote organisational allyship strategies that can help trans and non-binary colleagues, including having clear signposting to LGBTQA+ organisations, seeking opportunities to include trans and non-binary people in important projects and initiatives, and highlighting examples of excellent trans and non-binary inclusion work.
- Ensure appropriate pastoral care is available following transphobic incidents.
- Ensure that your organisational reporting system allows for and accommodates the reporting of transphobia and other forms of discrimination.
- Provide trans and non-binary awareness training for Freedom to Speak Up Guardians, so that they can support colleagues through the reporting process competently.
- Invest in active bystander training for all employees.
- Carefully consider any public facing statements about work related to trans and non-binary staff or patients before they are published.
- Develop an organisational policy line about trans and non-binary inclusion that is visible on organisation websites and clearly communicated to staff. Staff will be expected to adhere to this while representing the NHS as its employee.

Ensure that your organisational reporting system allows for and accommodates the reporting of transphobia and other forms of discrimination.

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- Ensure that the language used in job listings is gender neutral and gender inclusive and emphasises relevant skills. Include pronouns with any named individuals mentioned in recruitment materials.
- To make interviews more accessible, where possible, give interviewees the questions beforehand, ensure space will be available for applicants to change clothes if needed, and provide a detailed description of the interview process.
- Ensure that demographic monitoring forms are inclusive of trans and non-binary people by using best practice guidance.
- Ensure that information provided about staff DBS checks makes trans and non-binary staff aware that they may wish to use the sensitive application process.
- Ensure there are no breaches of the protections afforded to trans and non-binary people.
- Make gender neutral facilities available where possible.
- Invest in media training for senior leaders likely to be spotlighted by news or social media.
- Ensure that colleagues have protected time to attend staff network meetings, and that the network has an executive sponsor.
- Ensure that the organisation has trans-inclusive equality and diversity, transitioning in the workplace and LGBTQIA+ inclusion policies.
- Promote paperwork and electronic data management systems that allow for the recording of non-binary gender identities and include gender options other than ‘male’ or ‘female’
- Ensure administrative and IT staff are given correct and consistent information about updating electronic staff records on behalf of colleagues that is appropriate to their role and access permissions.
- Promote a ‘self-service’ option for staff to update their own electronic staff record profiles without assistance from other colleagues.
- Add a field for pronouns to electronic staff record profiles, staff ID cards and name badges.
- Produce and display visible inclusion messages in patient areas including that harassment will not be tolerated.
- Ensure processes for reporting incidents from patients are accessible to and understood by staff.
- Provide training for staff about how to respond to hostility from patients
- Provide appropriate pastoral support for staff who have been targeted by harassment from patients.
- Ensure that staff understand that those with gender critical or religious beliefs have the same rights and protections as those who are trans or non-binary, and how to respond appropriately if those rights appear to conflict.
- Ensure that staff likely to deal with Freedom of Information Act requests understand the differences between subject access requests and Freedom of Information Act requests.
- Ensure that clear guidance is given to staff handling Freedom of Information Act requests, so they can respond appropriately.

Appendix 1: Inclusive terminology

In this section

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Language best practices and expanded glossary

Note on style: Key words or phrases are written in **bold**. Definitions are written in plain text and style notes are highlighted with a grey keyline on the left.

As with any label or identifying word, when speaking about someone else, it is important to confirm which language they use to describe themselves, rather than assume.

Standard terms

Called/Calling in

The practice in conflict resolution of privately and compassionately telling someone that their behaviour or language is unacceptable.

'Coming out'

Term used to describe the act of disclosing one's sexuality or gender identity to others.

'Coming out' is a lifelong process. Individuals 'come out' more than once – forming new relationships, both professional and personal, will often require an individual to disclose their sexuality or gender identity for many reasons.

It is important to recognise that 'coming out' as trans or non-binary is a different experience than 'coming out' as LGB+. Often, people will disclose their sexuality to others to participate fully in relationships with others (for instance, attending work functions with a same-sex partner). However, trans and non-binary people often feel that disclosing their gender history with others may jeopardise their ability to be seen as a 'legitimate' member of their gender, and that others may treat them differently if they know they are trans.

Choosing to not 'come out' as trans is not an act of deception, but often a choice based on concerns for physical safety and lack of respect from peers. Trans and non-binary people should not be pressured to come out under any circumstances unless they wish to.

Cisgender

An adjective describing people whose gender identity is the same as their assigned sex at birth.

Cisheteronormativity

A term used to describe the way in which society at large may expect everyone to be cisgender and heterosexual as a default.

Deadnaming

Using a trans or non-binary person's previous name(s). This could be accidental or come with the intent to bully, harass or belittle someone; regardless of intent this can be very painful for trans and non-binary people

Deadnaming may constitute discrimination depending on the context in which it occurs.

Deed Poll

A document allowing a person to legally change their name for all purposes.

This may be enrolled (registered with the court for a fee, and searchable by the general public) or unenrolled (not registered with the court, usually made by an individual themselves for free).

Both are legally valid, and it may constitute discrimination to refuse an individual's deed poll on the grounds that it is unenrolled.

Equity

The principle of treating everyone fairly according to their needs. Often used instead of **equality**, which is treating everyone the same regardless of their circumstances. Equity is favoured by many as it allows for the discussion of structural issues in ways that equality does not. Equity may necessitate conversations about how the experiences and needs of trans and non-binary staff with another protected characteristic (such as race, religion, disability) may differ from their trans and non-binary peers without these characteristics, and the needs that may arise as a result.

Gender

'Gender' can encompass a variety of different meanings. For many, it is interchangeable with 'sex' (see definition below), however 'gender' may also be understood as a holistic view of the social, psychological, emotional and cultural traits that classify an individual as female or male or another gender. This can include expectations about how men and women are 'supposed' to behave in relation to career aspirations, hobbies, emotions, child-rearing, clothing etc.

Different societies at various times in history until today have held varying notions of gender that may differ from our own. Gender is heavily influenced by culture, religion and family structures, among other factors. For this reason, Western conceptions of gender have not always existed as they do today.

As 'gender' can be a vague term, **'gender identity**' is often used to describe an individual experience of gender, which may or may not be different from that assigned at birth (see 'sex' and 'assigned sex at birth' for more information).

'**Gender expression**' describes the ways in which a person conveys their gender identity to others. This may include clothing, hair, make up, voice, name and pronouns.

Gender critical

The philosophical belief that biological sex is 'real, important and immutable' and cannot be changed should not be conflated with gender identity; even in cases in which a trans person has legally changed their sex for all purposes (see 'Gender Recognition Certificate' for more information).

There are five criteria which are used to establish whether a belief is protected under the Equality Act the belief is genuinely held

It must be a belief, not an opinion or viewpoint. It must be a belief as to a weighty and substantial aspect of human life and behaviour. It must attain a certain level of cogency, seriousness, cohesion and importance. It must be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others.

The gender critical beliefs of the claimant in Forstater vs CGD Europe satisfied the criteria to be considered a protected belief and were found to be acceptable under the Equality Act 2010 on the grounds of the protected characteristic of 'Religion or Belief'. They remain acceptable, even if such a belief or opinion may be considered 'profoundly offensive and even distressing to many others'.

According to the Forstater ruling this does not allow 'those with gender critical beliefs (to) misgender trans persons with impunity'; rather, they will 'continue to be subject to the prohibitions on discrimination and harassment under the Equality Act'. There is a difference between the belief itself, which is protected, and the way in which the belief manifests. Employers should be mindful that even if the belief itself is protected, it must not manifest in discrimination, bullying, harassment or demeaning of trans and non-binary people (including deliberately misgendering).

Gender inclusive language

Gender inclusive language (also known as gender additive language) is when different cohorts and demographics are specifically included in a description. An example of this is the sentence 'women, girls and some trans and non-binary people menstruate', rather than 'women and girls menstruate'.

Although we might assume trans and non-binary people are included in the latter sentence, using gender inclusive language makes it explicit that trans and non-binary people are included, and their needs considered in any discussion.

Gender inclusive language also helps avoid erasing groups who may feel that their experiences are ignored or not sufficiently considered when we use gender neutral language. For example, 'people who menstruate' may seem exclusionary to some women who feel that menstruation is a fundamental part of their female identity.

Gender neutral language

Gender neutral language is intended to de-emphasise gendered terms in circumstances where gender is not relevant. An example is replacing 'good evening, ladies and gentlemen' with 'good evening, everybody'.

Gender neutral language can help people feel included and avoid terms that may be considered outdated or stereotypical.

However, in some circumstances, particularly where gender may affect the ways in which someone interacts with a service, gender inclusive language may be more appropriate.

Gender Recognition Certificate

A certificate that allows a trans person to change their legal sex from male to female or female to male on their birth, marriage and death certificates. It also makes it illegal to share a trans person's gender history without their consent in a professional capacity.

> Very few trans people in the UK apply for Gender Recognition Certificates, owing to the relatively few uses they have, and the burden of meeting the application criteria.
>
> Non-binary people can apply for a Gender Recognition Certificate, however non-binary genders are not legally recognised by the government, as they are in many other countries, usually denoted with an X in place of M or F. Therefore, a non-binary person would have to choose either F or M.

Homo-, Bi-, Trans-, Intersexphobia

A noun describing fear or hatred of, or prejudice against, gay, lesbian, bisexual, transgender or intersex people, or those perceived to be, that may manifest in physical or emotional violence, discrimination, harassment, victimisation, exclusion and stigma.

Intersectionality

Recognition of the interactions between different minoritised identities (such as race, disability, class and gender), and the ways in which these create distinct forms of oppression or disadvantage.

Intersex

An adjective used to describe people whose sex characteristics (such as primary and secondary sex characteristics, hormones, genitals, chromosomes etc) do not fit 'typical' medical definitions of male or female.

Some people may use other language to describe their own experiences, such as "variations in sex characteristics'. When working with individuals, take care to use the language they do to describe themselves.

LGBTQIA+

Acronym for lesbian, gay, bisexual, transgender, queer, intersex and asexual. The '+' includes identities not otherwise specifically named, such as pansexual and non-binary.

> When referring to communities minoritised due to sexual orientation or gender identity, 'LGBTQIA+ communities' is best practice. It is important to use 'communities' plural, as there are many diverse groups encompassed by the LGBTQIA+ acronym.

Microaggression

An interpersonal action or statement that unintentionally, subtly or indirectly discriminates against a member or members of a marginalised group.

Examples of microaggressions may include deadnaming, using the wrong pronouns, asking for intimate details of a person's transition, or using exclusionary language.

Non-binary, Enby

Non-binary is an adjective describing identities that do not fit into binary definitions of male or female. This may be shortened as 'enby' (pronounced 'N B') by some non-binary people.

Non-binary people may or may not consider themselves to be transgender, so it is important not to make assumptions about the language people use to describe themselves.

Protected characteristic

A set of nine characteristics that are protected from discrimination in the UK by the Equality Act 2010. The protected characteristics are:

- age
- gender reassignment
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion or belief
- sex
- sexual orientation.

> For more information, see 'Equality Act 2010'.
>
> Although included in the law, the term 'Gender Reassignment' is considered outdated by many trans and non-binary people, as it emphasises medical transition over gender expression. It is important to note that individuals do not need to have undergone any medical treatment or surgery to be protected from gender reassignment discrimination.
>
> In 2015, the Women and Equalities Committee advised the government to update the Equality Act and replace 'gender reassignment' with 'gender identity' 44.
>
> When referring to the Equality Act and the protected characteristics specifically, 'gender reassignment' is acceptable. Outside of the law, 'gender identity' should be used.

Transgender, Trans

An adjective describing people whose gender identity is different from, or does not sit comfortably with, their assigned sex at birth.

> Trans people can include trans women and men. Some non-binary people or people with non-binary identities use the word trans to describe their experience, but others do not.
>
> When referring to trans communities, it is best practice to say 'trans and non-binary communities'. It is important to use 'communities' plural, as there are many diverse groups that can be included within the trans 'umbrella'.

Transition

The processes that a trans and/or non-binary person may undergo to align their body, legal identity and social relationships with their gender identity, rather than their assigned sex at birth.

Transition generally has three categories: social, medical and legal.

Social transition involves telling others about new names and pronouns, coming out to others (if it is safe to do so), and finding communities of other trans and non-binary people.

Medical transition can include taking oestrogen or testosterone on prescription, which can provide feminising or masculinising effects. It may also involve undergoing various surgeries, depending on the desired outcomes for the individual. Many trans and non-binary people do not undergo medical transition, and those that do may choose various interventions depending on the changes they want for their body.

Legal transition may encompass changing names legally via deed poll (see Deed Poll in the glossary), and/or applying for a Gender Recognition Certificate (see Gender Recognition Certificate in the glossary).

> There is no standard transition pathway that trans and non-binary people must undertake, and everyone experiences their transition differently.
>
> It is therefore important to not make assumptions about an individual's transition.

Trolling

The act of posting deliberately inflammatory, hostile or offensive comments online with the intent to cause disruption.

Sex

A noun denoting the classification of bodies as male, female or intersex based largely on external appearance and usually determined at birth.

Nuanced terms

Assigned sex at birth

The sex assigned to a person by a medical professional when they are born, usually identified through external examination of the genitals.

> Widely accepted and used; however, it is not appropriate to refer to a transgender person's assigned sex at birth unless contextually relevant. It is best practice to make the individual explicitly aware of the context if this terminology is being used.
>
> This may also be written as sex recorded **at birth**.

Assigned female at birth (AFAB)

A person who is decided to be female at birth based on external genitalia.

> Widely accepted and used, however it is not appropriate to refer to a transgender person's assigned sex at birth unless contextually relevant. It is best practice to make the individual explicitly aware of the context if this terminology is being used.

Assigned male at birth (AMAB)

A person who is decided to be male at birth based on external genitalia.

> Widely accepted and used, however it is not appropriate to refer to a transgender person's assigned sex at birth unless contextually relevant. It is best practice to make the individual explicitly aware of the context if this terminology is being used.

Cross dresser

A noun used to describe people who wear clothing or accessories associated with a different sex sometimes but do not wish to transition or wear such clothing or accessories all the time.

> This term would be considered offensive if applied to a trans person who did not explicitly identify with the phrase.

Passing

Being perceived as heterosexual or cisgender by others as an LGBTQIA+ person. This may be intentional (on the part of the LGBTQIA+ person) or unintentional (being assumed to be heterosexual or cisgender by others).

Queer

An adjective used to describe sexuality and gender identity that does not neatly fit the definition of other adjectives or used as a general synonym for LGBTQIA+.

> Once considered a slur, 'queer' has been reclaimed by some people to describe their sexual orientation and/or gender identity. It is most commonly used by people who feel that terms like 'gay', 'lesbian' or 'transgender' do not describe their lived experience of sexuality and/or gender. It is also considered a useful catchall term when translating sexual orientations and/or gender identities from a language other than English as it does not prioritise the terms within the LGBTQIA+ acronym.
>
> Some people may find this term offensive, so it is important not to assume that everyone identifies with it.

Stealth

Term used to describe a trans or non-binary (or LGBQA+) person that has chosen, for any number of legitimate reasons, not to share their gender history (or sexuality) with others.

> Individuals may be stealth only in certain circumstances, such as within the workplace.
>
> 'Stealth' is okay to use if it is within the context of LGBTQIA+ people protecting their safety when interacting with non-LGBTQIA+ people but will be considered offensive if used as evidence of 'deception' on the part of LGBTQIA+ people.

Third sex, Third gender

Terms used by some to describe people who do not identify as male or female, are not perceived by others or institutional structures (such as the government) as male or female, and/or do not have the same gender identity as their assigned sex at birth.

These terms are more commonly used in South Asian than European cultures and may be offensive when applied in a Western context to describe European transgender people. Additionally, people who identify as third sex or third gender may or may not identify as being part of the transgender umbrella, so it is important not to assume.

Terms that may be considered offensive or derogatory

1. Use of the word is essential for the context of the discussion.
2. It is being used by a trans or non-binary person that is specifically discriminated against by its use to 'reclaim' the term. For example, a trans woman using the slur 'tranny' to refer to herself would be acceptable in her specific context, but that does not mean a cis person could use it in any other context, and other trans and non-binary people may find this offensive.

In both cases, appropriate warnings should be given. It is best to provide a warning at the start of the presentation/session etc that language considered offensive may be used throughout, and again before the language is used.

FTM/MTF

Older terms used to describe trans people who experience transition as going from 'male to female' (MTF) or female' to male' (FTM).

> This term may be used by some trans people to describe themselves but should not be used to describe anyone who does not explicitly identify with it.

Hermaphrodite

An outdated term used to refer to intersex people.

> This term may be used by some intersex people to describe themselves but should not be used to describe anyone who does not explicitly identify with it.

'Identifies as'

A phrase commonly used to refer to an individual's gender identity, which can be invalidating as it implies that an individual's gender identity is a choice, rather than an inherent reality.

> Use 'is trans, gay' etc instead. E.g., 'Alex is a trans man' rather than 'Alex identifies as a trans man'.

'Natal man/woman', 'Biologically male/female', 'Genetically male/female', 'Born a man/woman', 'Male to female/female to male'

Phrases that attempt to categorise biology exclusively and separately from gender identity.

Biology and gender identity are not discrete and unchangeable but interact in interesting ways for cis and trans people. Therefore, these phrases may be too simplistic.

> These terms are commonly used, particularly in a medical context, however care should be taken to mirror the language used by trans and non-binary people themselves.

'Openly' transgender

A phrase intended to show that an individual is known to the public to be transgender.

Considered offensive as it implies trans people are 'deceptive' or hiding their identity.

‘Pre- ‘, ‘Post- operative’

Offensive terms used to refer to a trans person before and after they have undergone various surgical procedures to more closely align their body with their gender identity.

> Use ‘pre-transition’ or ‘post-transition’ instead but only if it is contextually appropriate to talk about a trans person’s specific gender history. For example, an individual may wish to discuss their medical history from a period before their medical transition, and it would be appropriate to then refer to this background as ‘pre-transition’.

Preferred pronouns

A phrase used to refer to the pronouns that an individual uses to describe themselves (ie, he/him, they/she) that can be invalidating as it implies that respecting an individual’s pronouns is a choice rather than a respectful and necessary social rule.

> Use ‘pronouns’ instead. For example, ‘My pronouns are he/him/his’

‘Sex change’

A simplistic and inaccurate term used to refer to any number of surgical procedures that a trans individual may undergo to more closely align their body with their gender identity.

> If referring to surgical or medical transition is appropriate and necessary within the context of discussion, be specific. For example, ‘Trans people may undergo mastectomy and chest contouring to remove breast tissue and build a masculine body shape’.

Transexual

An outdated term referring to a trans person.

> This term may be used by some trans people to describe themselves but should not be used to describe anyone who does not explicitly identify with this word.

Tranny

A term used to describe transgender people that is widely considered to be offensive.

> This term may be used by some trans people to describe themselves but should not be used to describe anyone who does not explicitly identify with this word.

‘Transgenders’, ‘A transgender’, ‘Transgendered’, ‘Transgenderism’, Transgender (when used as a proper noun rather than adjective)

Common grammatical mistakes that may have the unintended consequence of offending or seeming derogatory.

Transvestite

An outdated term referring to trans people and people who cross dress.

> This term may be used by some people to describe themselves but should not be used to describe anyone who does not explicitly identity with this word.

Medical terms

Top surgery

Refers to several different procedures undergone to either remove breast tissue to give the appearance of a flat chest, or to provide breast augmentation depending on the intended result.

Bottom surgery

Refers to several different procedures undergone to change, remove or modify internal or external genitalia and/or sexual organs.

To learn more about medical transition and the various types of surgical interventions available, please visit GenderKit: Lower Body and GenderKit: Upper Body.

Appendix 2: Pronouns

In this section

> I was the only person to introduce myself with pronouns; everyone was so shocked."

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What are pronouns?

Pronouns are the words used to refer to people not being addressed directly, and they can be used instead of names in conversation. Often, pronouns have gendered implications. Common pronouns include she/her/hers, he/him/his and they/them/theirs.

Everybody has pronouns that they like to be called by, not just trans and non-binary people.

Some people may ask to be addressed with they/them/their pronouns, instead of he/him/his or she/her/hers.

Others may believe that it is grammatically incorrect to use they/them/theirs to refer to a singular person, however this is false.

They/them/there is often used to refer to people who are not personally known, and in classical literature, Geoffrey Chaucer, William Shakespeare and Jane Austen, all used them/them/their pronouns to refer to singular characters.

There are also languages that do not have specific gendered pronouns, so a direct translation would refer to they/them/their and not he/him/his or she/her/hers.

Language is constantly evolving and changing, and the language that people use to describe themselves and their experiences of gender will too.

How do I know someone's pronouns and gender?

In everyday, interpersonal interactions between friends and colleagues, a person's gender is often irrelevant to the conversation. In other instances, it might be relevant to address gender as a means of providing person centred care, or to mitigate inequity. It is important to consider whether a person's gender (or gender as a topic) is relevant to the interaction taking place.

A person's gender may not be obvious just by looking at them. Using they/them pronouns for people as standard before their gender or pronouns are known is a useful way to avoid using the wrong pronouns by mistake.

In conversation with or about a person, it is polite to ask for a person's pronouns. For example, "how would you like me to refer to you?" or "can I just check, what pronouns do you use?"

Everybody has pronouns that they like to be called by, not just trans and non-binary people.

If their gender is relevant, for example on a demographic monitoring form, details can be sought with the same sensitivity as any other demographic information about a person. It is best to ask privately, and perhaps alongside other information, in order not to draw attention to their gender, or make them feel judged.

For good practice around appropriate language for demographic monitoring around sexual orientation and trans status, please check the guidance available at: www.lgbt.foundation/monitoring

Making mistakes

Treating pronouns with the same respect as someone's name can help people understand how hurtful the wrong words can be.

Everyone makes mistakes from time to time, but it is important to acknowledge and learn from them.

Apologise quickly, make the correction and move on with the conversation. Do not draw attention to the mistake, and do not over-apologise, as this will often make the situation more uncomfortable.

The person being misgendered may be annoyed or angry, but these feelings are often not meant personally, rather an expression of frustration at the general experience of being misgendered repeatedly (See 'Microaggression' in the glossary). Using a different name or pronouns is one of few ways for trans and non-binary people to socially affirm their gender, particularly early on in transition, and so it may feel particularly invalidating to have people misgender them in this way.

Neo-pronouns

Neo-pronouns are new pronouns created by trans, non-binary and intersex communities to speak to their particular experiences of gender. For more information about neo-pronouns, see LGBT Foundation's pronoun guide.

Everyone makes mistakes from time to time, but it is important to acknowledge and learn from them.

Using different pronouns in different spaces

People may use different pronouns depending on who they are with or the space that they are in. Some might also use different pronouns in different spaces for safety reasons.

For example, a trans person may use he/him pronouns at work, but they/them pronouns at their community group. This could be personal preference or because they feel unsafe using gender neutral pronouns at work. Others may use neo-pronouns online but not in person.

Some people may use pronouns from a different language or culture. They might use these pronouns all the time or may only use them at events celebrating their heritage or culture, or with other members of their community.

Additionally, some people may only be comfortable with certain people using particular pronouns for them. For example, a person might ask women to address them with she/her/hers but ask others to use xe/xem/xyr. Another person might prefer trans and non-binary people to use fae/faer/faerself to talk about them but ask cis people to use they/them/theirs.

As always, be led by the individual's wishes, and respect pronoun use as well as possible.

Using more than one pronoun

Some people may use more than one pronoun to talk about themselves. This is commonly written as he/they, they/she, xe/she, fae/he, he/she/they or any combination of two or more pronouns.

If this is the case, alternate between the pronouns when talking about the person, unless there are more specific instructions. When unsure, it is best practice to politely ask; for example, "can I just check, should I use both/all your pronouns interchangeably or would you prefer a specific one?"

How to tell people about pronouns

It is good practice to include pronouns in any introductions, both face to face and online (as long as it is safe to), as this normalises asking and telling people about language requirements. This is especially important for cisgender people to do as it counters the idea that pronouns are assumed unless there are special circumstances; for example, "my name is Mark and I use 'he, him and his' pronouns."

Even if it is assumed that pronouns are obvious, asking and telling people about pronouns can help reduce stigma and empower staff to comfortably share their information without being singled out.

Adding pronouns to video conferencing screen names and email signatures or wearing pronoun badges are simple ways to introduce this language to the workplace and promote inclusivity.

Appendix 3: Survey findings

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Transphobia at work

Have you experienced transphobia at work?

55%

said **'Yes'**

44%

said **'No'**

Did you report transphobia in work?

27%

said **'Yes'**

72%

said **'No'**

Transphobic behaviours experienced

What transphobic behaviours have you experienced?

41%

said **'Derogatory language'**

47%

said **'Negative or stereotypical assumptions about your gender identity'**

12%

said **'Questions about your professional competence based on your gender identity'**

13%

said **'Being excluded from work life, including work events and socials'**

14%

said **'Bullying'**

3%

said **'Violence or threat of violence'**

11%

said **'Other'**

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Who perpetrates transphobia at work?

28%

said **'Senior doctors/colleagues'**

26%

said **'Doctors/colleagues of same grade'**

21%

said **'Doctors/colleagues of junior grade'**

33%

said **'Non-medical colleagues'**

19%

said **'Patients'**

14%

said **'Families/relatives'**

10%

said **'Medical educators'**

10%

said **'Other'**

Support in the workplace

What pastoral support would be useful in the workplace after experiencing transphobia?

36%

said **'Quiet space'**

16%

said **'Support hotline'**

44%

said **'Conversation with independent workplace advocate'**

28%

said **'Paid leave for remainder of workday'**

32%

said **'Conversation with manager'**

7%

said **'Other'**

Do you have visible trans and non-binary role models in your workplace? This could be in the form of pictures in training literature, posters or resources in your workspace, regular speakers, colleagues.

22%

said **'Yes'**

77%

said **'No'**

Would having visible role models make you feel more included?

93%

said **'Yes'**

6%

said **'No'**

What makes or would make you feel included at work as a trans or non-binary person?

More general awareness and acceptance of trans / non-binary individuals and less focus on this aspect of my identity – I am much more than my gender identity."

At first, I joined my trust's LGBTQ+ network group who were very welcoming and active, which then gave me the courage to present fully with them and then at work, knowing that if anything went badly, they would support me."

I would personally love an NHS pronoun badge – or a lanyard with pronouns on. In my eyes, I don't need a big demonstration, just something that can help people get my pronouns right."

(I want colleagues to) treat me like they would any other guy."

Having people ask for my name and make changes if I prompt them on my pronouns is nice, but I do think what's better is if the team generally is open to things like having pronouns in emails or asking for pronouns in meetings."

I remember one trust I worked for having the inclusive LGBT Pride flag in their windows and on the first day, seeing that was something of a relief even if I still wasn't comfortable coming out as non-binary to colleagues. Such a small gesture felt so valuable."

I have been more fortunate than others in the 3 years that I have been out as trans whilst working for the NHS – many of my trans/non-binary colleagues have been excluded from changing areas, social events and been subject to bullying and other forms of harassment."

What would make you more likely to report transphobia in the workplace?

> If it was totally anonymous, which I don't think it ever could be, considering I'm the only trans person in my office! Additionally, having perhaps a non-cishet person, or well-educated ally, to report to, rather than someone who has never had personal experience."

> Acknowledgement about how hurtful and hard it can be to continue for the rest of day/week."

> If the reports were taken seriously and not just dismissed due to the person's age or cultural background."

> For me it hasn't been any major incident, it's just the daily grind of constant and unending microaggressions."

Quotes from focus group discussion

> (In a meeting I was the) only person to introduce myself with pronouns, everyone turned and stared, as if said a slur. Everyone was so shocked, (it was) as if I was speaking a different language. (It made me) feel like a child when everyone stared"

> I remember one trust I worked for having the inclusive LGBT Pride flag in their windows and on the first day, seeing that was something of a relief even if I still wasn't comfortable coming out as non-binary to colleagues. Such a small gesture felt so valuable."

To have senior people call you the expert... and 'bigging you up' means so much and lends so much respect that wouldn't otherwise be given."

Allyship should always be about material change and uplifting voices."

Trans and non-binary people have (expert skills) ... that the NHS need. (We) often work way above our pay grade and CV and should be promoted and rewarded (for it)."

Pronouns on EVERYONE'S email signatures! It is so easy. Should be set as part of your automatic email as soon as you enter a trust. A small step that makes a big difference."

Having (trans and non-binary) staff in high places is incredible, it feels like unspoken support".

Practices (and) senior leadership need to turn up when it's not Pride. (They do) nothing more than show up at a parade (for a) photo op... (but do not) put money where their mouth is."

Understanding that supporting people in their identities, rather than making it difficult, saves lives."

(Allies should) understand their privilege to call out people they are familiar with, compared to the victim/ target who may feel powerless."

Even if reporting (incidents) anonymously, being the only trans person in my direct workplace, I feel like it would be obvious, and I may be vilified"

(Allies should be) actively challenging! Being pro-active and not avoiding calling out discrimination."

(Allies should) be willing to correct mistakes/misgendering appropriately and challenge transphobic attitudes without a trans person being around"

(Allyship is) not just being supportive on paper but in detail too."

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References

1 LGBT Foundation (2023). Trans and Non-Binary Allyship in NHS Organisations.
2 British Medical Association (2022). Sexual Orientation and Gender Identity in the Medical Profession.
3 Ibid
4 Ibid
5 Ibid
6 Ibid
7 Ibid
8 Ibid
9 Ibid
10 Ibid
11 Ibid
12 LGBT Foundation (2023). Trans and Non-Binary Allyship in NHS Organisations.
13 British Medical Association (2022). Sexual Orientation and Gender Identity in the Medical Profession.
14 Ibid
15 The University of Edinburgh (2021). Intersectionality and Privilege [web page].
16 The Open University. Diversity and inclusion in the workplace [web page].
17 Ferguson, J (2021). Privilege Is Not A Dirty Word. Forbes.
18 Mental Health Foundation (2021). LGBTIQ+ people: statistics [web page].
19 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.
20 Carnegie, M (2022). The big LGBTQ+ wage gap problem. BBC Online.
21 LGBT Foundation (2023). Trans and Non-Binary Allyship in NHS Organisations.
22 TotalJobs. Trans employee experiences survey: Understanding the trans community in the workplace" (2021) – research conducted by Totaljobs. [web page]

23 Crossland Employment Solicitors (2018). Transphobia rife among UK employers as 1 in 3 won't hire a transgender person. [web page]

24 TotalJobs. Trans employee experiences survey: Understanding the trans community in the workplace" (2021) – research conducted by Totaljobs. [web page]

25 TotalJobs. Trans employee experiences survey: Understanding the trans community in the workplace" (2021) – research conducted by Totaljobs. [web page]

26 University of Bath. What to do when interviewing an autistic person for a job. [web page]

27 National Autistic Society. Interview tips for employers. [web page]

28 Warrier, V. et al. (2020) 'Elevated rates of autism, other neurodevelopmental and psychiatric diagnoses, and autistic traits in transgender and gender-diverse individuals', Nature Communications, 11(1). doi:10.1038/s41467-020-17794-1..

29 Ibid

30 TotalJobs. Trans employee experiences survey: Understanding the trans community in the workplace (2021) – research conducted by Totaljobs. [web page]

31 Baboolall, D et al (2021). Being transgender at work. McKinsey Quarterly. McKinsey & Company.

32 House of Commons Women and Equalities Committee (2016). Transgender Equality: First Report of Session 2015–16.

33 Legislation.gov.uk. Equality Act 2010. [web page]

34 Employment Tribunals. Case No: 1304471/2018.

35 Home Office (2022). Gender recognition: version 17.0. Guidance for His Majesty's Passport Office staff examining passport applications from customers who ask for a change of gender on their passport.

36 Legislation.gov.uk. Data Protection Act 2018. [web page]

37 NHS England (2019) Delivering same-sex accommodation (Annex B).

38 Equality Act 2010, Schedule 9: Work: Exceptions, Part 1: Occupational Requirements, Section 2, Sub-paragraph 4(b)

39 British Medical Association (2022). Managing discrimination from patients and their guardians and relatives: exceptions.

40 Ibid

41 BAILII (2021). Appeal No. UKEAT/0105/20/JOJ.

42 Legislation.gov.uk. Equality Act 2010. [web page]

43 Information Commissioner's Office. What does vexatious mean?. [web page]

44 House of Commons Women and Equalities Committee (2016). Transgender Equality: First Report of Session 2015–16.

45 Brown, C et al (2020. “It makes such a difference”: An examination of how LGBTQ youth talk about personal gender pronouns. Journal of the American Association of Nurse Practitioners 32(1):p 70-80, January 2020. | DOI: 10.1097/JXX.0000000000000217. And Sevelius JM et al (2020). Gender Affirmation through Correct Pronoun Usage: Development and Validation of the Transgender Women’s Importance of Pronouns (TW-IP) Scale. International Journal of Environmental Research and Public Health. 2020; 17(24):9525.

The Health and Care LGBTQ+ Leaders Network is a social movement comprising LGBTQ+ people and allies from a wide range of roles across health and care. Find out more about the network on the NHS Confederation website at nhsconfed.org/lgbtq-leaders or follow us on Twitter @NHSC_LGBTQ

The LGBT Foundation a national charity with LGBTQ+ health and wellbeing at the heart of everything it does. It celebrates and empowers LGBTQ+ individuals and diverse communities to realise their full potential, every day.

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