

10 January 2025

By email from: [info@forwomen.scot](mailto:info@forwomen.scot)  
to: [gram.equalitydiversity@nhs.scot](mailto:gram.equalitydiversity@nhs.scot)

Dear Sir/Madam,

### **NHS Grampian: Equality Outcomes 2025-2029 Consultation**

This response to the above consultation concentrates on Equality Outcome 5 on sex and Equality Outcome 3 on gender reassignment. In our capacity as an organisation working to protect women's rights we have brought two separate judicial reviews over the last four years regarding the definition of "woman" in law. The rulings in these cases are relevant for the health board's policies and practices regarding the Equality Act and provision of services for women.

To date, the Court of Session Inner House has made two important decisions:

1. In light of the Equality Act definition of woman as a female of any age, an exception in the Act allowing provisions in favour of women, **by definition exclude those who are biologically male.**

Incorporating those transsexuals (ie. those with the protected characteristic of gender reassignment) living as women into the definition of woman conflates and confuses the two separate and distinct protected characteristics of sex and gender reassignment.

[For Women Scotland v Scottish Ministers \[2022\] CSIH 4](#) (§36 and §39)

2. Individuals without a gender recognition certificate, whether they have the protected characteristic of gender reassignment or not, retain the sex in which they were born and have no right to access services provided for members of the opposite sex.

[For Women Scotland v Scottish Ministers \[2023\] CSIH 37](#) (§56 and §65)

Neither of these decisions were appealed against and duly became final and settled law. It is only the second part of the 2023 judgment, namely that a male who holds a gender recognition certificate comes within the definition of 'woman' for the purposes of the Equality Act, that was appealed and is currently awaiting a ruling by the UK Supreme Court.

There are obvious and immediate implications that result from these judgments for all health boards regarding the provision of single-sex patient accommodation, same-sex care and sex-specific clinical services.

### **Single-sex patient accommodation**

Many NHS policies, such as NHS Tayside's [policy on single-sex accommodation](#), refer to the importance of dignity, respect, privacy, and modesty for patients. The policy states: "it is recognised that the provision of single sex accommodation in health care organisations is considered to be a key factor to maximise patient dignity and ensure that privacy is promoted and respected".

For some patients, religious beliefs will be relevant. As MSP Pam Gosal [explained](#) at Stage 2 of the Gender Recognition Reform Bill, "for many religious women, particularly in the Islamic faith, it is religious law that they shall not let a man touch or see their body".

Patient vulnerability is a key consideration. A powerful [article](#) documents how a hospital in London took the extraordinary decision to deny surgery to a sexual assault victim, after she requested female-only post-operative care, explaining that:

*"Fear of male people while in a highly vulnerable physical state is not illogical; asserting boundaries can form an important part of recovery. For rape victims in particular, the right to stress the primacy of one's own perceptions of sex and power — rather than cede to someone else's insistence that their sex, and their power in relation to you, is whatever they say it is — can be vitally important."*

Safety is also a critical consideration. A recent [investigation](#) by the Women's Rights Network found that more than 6,500 rapes and sexual assaults were recorded in hospitals in England and Wales over nearly four years, with only 4% of suspects known to have been charged. One in seven of these crimes occurred on hospital wards. A particularly horrendous incident was reported by the [Telegraph](#) where an NHS hospital responded to a women's report of rape with the insistence that it could not possibly have happened as everyone on the ward was a woman. It took a year for the hospital to agree there was a male on the ward due to their policy of allowing patients to be accommodated on single-sex wards according to their self-identified gender.

In 2022, the then Cabinet Secretary for Health [stated](#) that "Since 2005 the Scottish Government has expected Boards to ensure that all of their facilities comply with the guidelines and recommendations on the elimination of mixed sex accommodation produced in 1999 and 2000 following a review of mixed sex accommodation, as well as relevant legislation including the Equality Act 2010. This Government supports the appropriate use of the separate and single-sex exceptions contained in paragraphs 26, 27 and 28 of Schedule 3 of the Equality Act 2010 by service providers, where it is a proportionate means of achieving a legitimate aim."

In practice however, many health boards appear confused, unaware, or simply unwilling to apply the exceptions in line with the rulings from the Court of Session. Encouraged by lobbyists and activist groups over many years, as well as a drive from the Scottish Government who wish to implement gender self-identification laws, hospitals have developed policies for transsexual patients that make single-sex accommodation almost impossible.

These policies are often confusing and misrepresent the law, as shown by the 2019 NHS Grampian [Guide for Staff to help them meet the needs of Trans Patients attending for Hospital Care](#) which appears to have been developed by a diversity group with no external, independent or legal input. Under 'In-patient accommodation for transsexual patients', the guidance recommends that allocation is based on the stage of a patient's transition process. No criteria or further guidance for decision-making is provided and the Equality Act exceptions are not mentioned.

*"Trans in-patients who have fully transitioned should be accommodated in wards appropriate to their sex.*

*Trans patients who have not yet begun the transition process or who are part way-through the transition process, require special consideration. These patients should be involved in the discussion to determine which accommodation would be most suitable for them."*

Clarity is needed on what is meant by the word "sex" in the first sentence in connection with having "fully transitioned". It is assumed it means the acquired gender according to a gender recognition certificate, but it may refer to post-operative transsexuals, or even the disputed and unscientific notion of "gender identity".

The guidance does not appear to be still online but the 2023 [report](#) on NHS Grampian's work on the PSED states it has been promoted at every equality and diversity training seminar. This indicates many staff have been given incorrect information and there is an urgent need for up-to-date training on the correct implementation of the Equality Act and the separate and single-sex exceptions.

It is important to understand that holding the protected characteristic of gender reassignment does not mean that a person's sex has changed. If a patient who holds this characteristic is uncomfortable with the single-sex accommodation provided for their sex it is possible that an alternative private solution can be found, within that ward or elsewhere, but without transgressing the accommodation provided for the opposite-sex. However, should that patient be placed in the opposite-sex accommodation the health board will have created a mixed-sex ward and becomes exposed to complaints and potential legal action from distressed patients with claims of discrimination, harassment (violating dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment), and sexual harassment.

The Equality Act exceptions apply to staff as well as patients and the health board should be mindful of upholding single-sex toilets and changing rooms. An employment tribunal is due to consider a significant case next month, as reported in the [Telegraph](#), concerning a nurse who complained about having to undress in front of a male doctor (who considers himself a woman) in the female changing facilities at the Victoria Hospital in Kirkcaldy.

### **Same-sex care**

The Court of Session ruled (see [paragraph 53](#)) that where a rape or sexual abuse victim requests a forensic medical examiner of a specific sex then this means sex as a biological term, and not someone with a gender recognition certificate. It would provide reassurance to

women if the online information at NHS Grampian's Sexual Assault Response Co-ordination Service is clear that female forensic medical examiners are available on request and that their sex will match that requested. At such a vulnerable and traumatic time this would ensure that some women do not self-exclude from vital services.

This principle broadly applies across all same-sex healthcare provision for the same reasons of privacy, dignity and safety outlined above. The [Times](#) describes how a woman was embarrassed and distressed after a male transsexual nurse arrived to perform her cervical smear test, despite her request for a female nurse. This resulted in the woman declining the procedure.

### **Sex-specific clinical services**

The drive for transgender inclusion in recent years has [often](#) resulted in dehumanising language for women, reducing them to body parts and functions and only serves to exclude women from important health services and screening programmes. A recent NHS Grampian [post](#) on Facebook offered cervical screening to "anyone with a cervix". Since some of the NHS's most vulnerable patients are women, particularly those who do not speak English, and more than 40 per cent of women don't know what the cervix is, [according](#) to the charity Jo's Cervical Cancer Trust, this actively acts against NHS efforts to encourage women to attend clinics. There is no upside for women in losing the words we need to talk about our bodies, our needs and our rights.

### **CHI number**

Equality Outcome 3 includes reference to the process for patients with the protected characteristic gender reassignment to change their CHI number. The aforementioned NHS Grampian [Guide for Staff to help them meet the needs of Trans Patients attending for Hospital Care](#) states the following:

*"Trans patients can request a new CHI number giving their new name and sex, via their GP Practice or directly from PSD (practitioner Services Division). Once a new CHI number is generated any subsequent referral to secondary care will be aligned to their new identity.*

*This will cause a new Health Record to be created, giving the patient the required degree of confidentiality.*

*Note there will be no link between the previous Health Record, or any information held in an IT system. The onus will be on the individual themselves to declare their previous identity as appropriate. Their previous health related information will be retained under their former identity."*

We have written at length ([here](#) and [here](#)) about the significant clinical risks involved in allowing patients to change the sex marker on their CHI number. It is not merely an admin change to validate a new identity but one that can have very real health consequences. Issues with ensuring patients are called for the correct screening programme for their sex have been long standing and remain only partially resolved. There remain known risks with the interpretation of blood tests with sex-specific ranges, investigations and referrals, and correct diagnosis and prescriptions. Fundamentally, health care professionals tell us they

can no longer trust that CHI data is accurate and now spend additional time and resources establishing this basic information for every patient prior to routine procedures.

A new health record management policy published by the Scottish Government in August 2024 conceded (see [paragraph 377](#)) that problems could be created for patients if their biological sex is not known and/or accessible via a historic record as normal test results and treatments could differ depending on whether someone was male or female.

Separately, the Scottish Government [insists](#) this is not a problem as “when a CHI number is changed, there remains a link between the old and new CHI in the patient’s record”. However, as the NHS Grampian Guide above has made clear, this is not the case. There is no electronic link at all. And as the Scottish Government’s own health record management policy (at [paragraph 374](#)) confirms, even if there was a link it would provide no assistance to the healthcare professional as male/female markers are removed from the patient’s previous record.

To illustrate the issues many GPs are facing due to the validation and affirmation of false sex information, this [post](#) on Reddit was written by a woman who identifies as a man and whose blood test showed critically high haemoglobin. The patient was advised to stop taking testosterone due to a high risk of suffering an imminent stroke. Instead, the patient reported the GP surgery for transphobia as she considered it unproblematic for the results to be within the normal male range. In this case the GP was clearly aware that the patient was female, but consider the situation if this patient changed GP or was taken to A&E with a suspected stroke - the CHI number and all records would show her as male, and blood test results would be regarded as within the normal range for a man. Unfortunately, it is all too easy to see how such a patient would not receive the correct treatment, or a critical delay in providing it.

The practice of changing the sex marker on CHI numbers is not an equality issue but one that should be recorded as a known clinical risk and, consequently, the mechanism allowing it to happen should be closed down on patient safety grounds.

We would be grateful if you could confirm the safe receipt of this letter and that it will be included as a response to the consultation.

Yours faithfully,

Trina Budge  
Director, For Women Scotland