

Amanda Pritchard
Chief Executive
NHS England
Wellington House
133-135 Waterloo Road
London, SE1 8UG

7th October 2024

Dear Ms Pritchard

I am writing concerning the **Mandatory Statutory Training for NHS England Staff** on “Equality, Diversity, Inclusion and Human Rights Skills: General Awareness” (v1.9.6 published on 13th August 2024) and required as mandatory training for 6,500 staff of NHSE.

The training in respect of sex, gender reassignment and belief discrimination conflicts with and in some places actively contradicts the law. It is partisan and ideological, and it puts NHSE at risk of undertaking mass discrimination and harassment. **We call on you to recall and review the training to ensure that it is in line with the law and with your responsibilities under the public-sector equality duty and the Human Rights Act.**

Our specific concerns about the content of the training on sex and gender are set out in the attached review. But overall, we were shocked at the poor quality of the material. It is a rambling, unstructured, document which does not present its subject matter adequately or coherently across the whole of the Equality Act 2010.

In the accessible version that I have reviewed, significant portions have been cut and pasted from various websites and documents, often without citation (or with incomplete references) and in some cases with unfinished sentences, grammatical errors and references to concepts (such as the “health inequalities vulnerability triangle”) which are not explained at all. This is combined with unsupported opinion, which appears to come from the internal groups that created the document (“NHS England colleagues and colleagues from legacy Health Education England and NHS Digital” as well as the LGBT+ network).

The training says: “It is important to have a general understanding of the legal framework regarding equality, and that you can relate this framework to your everyday role.” But it does not explain the legal framework of the Equality Act 2010 with any clarity (for example it refers to, but does not

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We campaign for clarity about sex in law, policy and language.

Trustees: Michael Biggs, Rebecca Bull, Julia Casimo, Naomi Cunningham, Emma Hilton. CEO: Maya Forstater

explain, core concepts such as unlawful direct and indirect discrimination, harassment and victimisation).

The training proceeds through a series of scenarios which present a highly idiosyncratic and legally misleading set of snapshots “to show that Equality & Diversity issues are not always obvious”. Participants are then required to complete a multiple-choice assessment and to give the “correct” answers in order to pass the training. We understand this is mandatory and can be a condition for advancement and involvement in, for example, recruitment panels.

Many assertions of dubious legality are included. These present an erroneous and ideological interpretation of the law.

There is considerable cost in wasted person-hours in forcing people to undertake training that is at best useless. But there is even greater risk of costs from encouraging people to take unlawful action. The past few years have seen a dozen successful employment-tribunal cases brought by people who have faced discrimination and harassment from colleagues who mistakenly thought that there was something illegitimate about the ordinary belief that there are two sexes and that sex matters.¹

The training creates two legal risks. The first is the risk that recipients of the training will act on it, resulting in unlawful harassment and discrimination of colleagues. The second is the risk that by forcing those who disagree with the idea of gender identity to “agree” in order to pass, NHSE is directly subjecting employees to unlawful harassment or discrimination on the basis of philosophical belief.

Several current cases involving NHS staff concern belief discrimination or sex discrimination relating to single-sex facilities. They illustrate the danger that NHSE is encouraging discrimination and harassment of staff on a mass scale via its policies and training.

As a public authority, NHS England is required to have due regard to the aims of the public-sector equality duty: to eliminate discrimination, advance equality of opportunity and foster good relations when making decisions and developing policies. In light of this we call on you to recall and review this training, which is objectively substandard and which misrepresents the law.

Yours sincerely



Maya Forstater
CEO, Sex Matters

¹ Ruth Birchall and Jo Phoenix (2024) [Don't Get Caught Out A Summary of Gender Critical Belief Discrimination Employment Tribunal Judgments](#) Employment and Justice Occasional Paper, University of Reading. [Kristie Higgs](#) was dismissed after she was wrongly accused of holding “illegal discriminatory views”; she is pursuing a belief-discrimination case against her employer. [Professor Jo Phoenix](#) won at the employment tribunal after colleagues signed a public letter accusing her of being part of a group that is fundamentally transphobic. Caseworker [Roz Adams](#) was subjected to unlawful discrimination and constructive dismissal by Edinburgh Rape Crisis Centre, which was influenced by “gender identity theory”.

NHS England Training Review

Inadequate explanation of concepts in the Equality Act

This review focuses on issues relating to sex and gender reassignment (and to the protected characteristic of belief in relation to this). However the overall training is sub-standard.

The aim of this training includes to “Explain what we mean by equality, diversity, inclusion and human rights and why they are important”. The content overall is inadequate to achieve this aim. The entire content on human rights is the statement that:

“Human rights refer to the basic rights and freedom that belong to every person in the world.”

Although it should not be expected that every employee becomes an expert on equality law, when concepts such as discrimination and protected characteristics are introduced, they should be explained clearly and accurately.

The training does not define discrimination, bullying or harassment, but says:

“If you witness bullying, harassment, or discrimination it is important to respectfully challenge it in the moment, if it is safe to do so. It is important to actively support colleagues by offering compassion and space to be themselves and being a voice of reason and allyship when fear and hate come to the surface.”

“The organisation has a zero-tolerance approach to discrimination, bullying and harassment.”

“It is not acceptable under any circumstances to discriminate on any aspect of identity,”

“The Equality Act states it is against the law to discriminate against someone because of a protected characteristic.”

Encouraging a “zero-tolerance” approach without a clear and accurate description of what this refers to is likely to encourage employees towards conflict and intolerance, and the kind of “heresy hunt” seen in Edinburgh Rape Crisis Centre against Roz Adams.

The training does not acknowledge that the Equality Act includes exceptions to the provisions on discrimination (such as provisions to allow single-sex facilities), or that Article 3 of the European Convention on Human Rights provides an absolute protection against humiliating and degrading treatment, which includes women being forced, coerced or tricked into undressing with men.

Misrepresentation of the protected characteristics

The Equality Act protected characteristics are referred to throughout, but only explained more than half-way through. Several are represented confusingly and ideologically, or misrepresented.

Gender Reassignment

The training adds the term “Gender Confirmation”, which does not appear in the Equality Act, and suggests this as the preferred term. Rather than providing the statutory definition of the protected characteristic of gender reassignment, it says:

“The law protects people from direct and indirect discrimination and harassment if they are not the same gender as the one they were born as.”

This is an inaccurate description of the law protecting transsexuals from discrimination. It is an ideological representation of the idea of gender identity.

Pregnancy and maternity

The provisions on pregnancy and maternity are oddly stated as relating to “people”:

“People are protected against discrimination on the grounds of pregnancy and maternity during the period of their pregnancy and any statutory maternity leave to which they are entitled. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination. Breastfeeding is explicitly protected.”

It is *women* who are protected by pregnancy and maternity protection. It is correct that during the protected period, work-based protections linked to pregnancy and maternity are not “sex discrimination”, but this is a strangely detailed technical point to make in training that is vague and sweeping about many other aspects of the Equality Act. The inclusion of this point appears to be aimed at separating the concepts of women, sex discrimination and pregnancy and maternity.

Religion or belief

“Religion includes any religion. It also includes a lack of religion (people are protected if they do not follow a certain religion). Belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live. This characteristic does not include political or scientific beliefs.”

This is inaccurate. Philosophical beliefs that have a political or scientific character can be included under the protected characteristic of “religion or belief”. To qualify as a “philosophical belief” under the Equality Act, a belief must satisfy the five criteria set out in *Grainger plc v Nicholson [2010]* and reflected in the Equality and Human Rights Commission Code of Practice 2011. These are that:

- The belief must be genuinely held
- The belief must not simply be an opinion or viewpoint based on the present state of information available
- The belief must concern a weighty and substantial aspect of human life and behaviour
- The belief must attain a certain level of cogency, seriousness, cohesion and importance
- The belief must be worthy of respect in a democratic society, not be incompatible with human dignity and not be in conflict with the fundamental rights of others.

The belief that sex is binary, immutable and important, and that therefore “trans women” are men, has been judged to meet these criteria in the case of *Forstater v CGD [2021] EAT*.

While sex is described as being a man or a woman, the training interprets this as an identity based on internal feeling, not the material reality of being male or female.

Ideological bias

The training is strongly rooted in the idea of identities. A defining theme is “social identity”, which, it explains on the final page:

“refers to the ways that people’s self-concepts are based on their membership in social groups. Examples include religions, nationalities, occupations, sexual orientation, ethnic groups, and gender.”

Under “language and banter” it says:

- “Check assumptions about the diversity of our staff identities, including culture, faith and abilities.”
- “If you are unsure how someone identifies, then use neutral language. Use the term a person uses to describe themselves (like ‘he’ or ‘she’ or ‘they’). Be mindful that some people don’t like pronouns being mentioned.
- “When people have changed their name as part of their gender transition, do not refer to them by their previous name – this is known as ‘deadnaming’ and can devalue their transition.”

In Case Study 4, it says:

“It is not acceptable under any circumstances to discriminate on any aspect of identity.”

Under Our Resources, it says:

“People with a protected characteristic can often experience discrimination based on their identity, such as their age or sex.”

In the answer to Question 3, it says:

“Gender identity is one’s own internal sense of self and their gender, whether that is man, woman, neither or both. Unlike gender expression, gender identity is not outwardly visible to others.”

In answer to Question 8, it says:

“Gender discrimination is when someone is treated unequally or disadvantageously based on their gender but not necessarily in a sexual nature. This includes harassment of discrimination based on sex, gender identity, or gender expression.”

Overall it creates the impression that protected characteristics are all a matter of self-identity.

This overemphasis on identity, combined with lack of recognition of belief discrimination and the material reality of sex, sets the scene for guidance which misrepresents the Equality Act and tells people that they must allow men who identify as women to use “female-only” facilities (and vice versa). This is likely to be a breach of both human rights and the Equality Act.

Incorrect guidance on single-sex facilities and trans-identifying staff

A case study presents a scenario in which a staff member who does not feel comfortable sharing toilet facilities with a member of the opposite sex is described as “**transphobic**”. It states that colleagues who identify as transgender are entitled to use opposite-sex facilities and “it is always an individual’s choice to use whichever facilities match how they identify.”

“Case Study 5: Transphobic Colleague

David has recently joined your team. During his induction, David confidentially disclosed to his immediate line manager that, although he was assigned as a girl at birth, he identifies

as a man. David and his line manager look at our organisation's Trans Equality Policy together. David makes a decision to use the male toilet facilities while at work, supported by his manager.

Yesterday, David visited the male toilet nearest to his workstation and – whilst at the sink washing his hands – recognised and said hello to Simon (a colleague based in his wider department).

When Simon returned to his desk, he asked for a meeting with his own line manager, where he stated that it was unacceptable for David to be using the male toilets, given that he was born a female. Simon also stated that he refused to use the male toilets at the same time as David. Simon suggested that, as a compromise, David should be asked to use the disabled toilet located on the same floor.

What do you think? Is Simon's suggestion acceptable?

If you think the answer is no, you are correct. Simon's suggestion was not acceptable. David is entitled to use the toilets of the gender that he identifies with and suggesting that he should use the disabled accessible toilet under these circumstances is an example of illegal harassment because it creates a hostile and potentially unsafe environment for David.

In this scenario, the line manager should clarify this to Simon. If Simon continues to insist that David is wrong to use the male facility, the line manager should address this as a harassment issue in line with the Respect at Work and Anti-Bullying and Harassment Policy.

In some offices, gender neutral and accessible toilet options are available, which anyone is welcome to use. However, it is always an individual's choice to use whichever facilities match how they identify."

This case study is presented as being about a female staff member ("David") who identifies as a man and uses male facilities. The same case could have been illustrated (and later is) with the inverse situation: a male member of staff identifying as a woman and seeking to use female facilities. This may make it more obvious why the policy is problematic, since men are responsible for 98% of sex crimes, with voyeurism and indecent exposure the two most common. Single-sex facilities are provided to protect the dignity and privacy of both men and women, but it is women are most vulnerable to this kind of sexual harassment. 1 in 4 women have been raped or sexually assaulted as an adult. Many women simply feel more comfortable undressing, changing and dealing with menstruation without members of the opposite sex.

The training presents concern about the policy of allowing people to use opposite-sex facilities as "transphobic" and "illegal harassment".

The teaching section is followed by an assessment question (Question 3):

"You are working as part of a large project team involving members of staff from across the organisation. The project team meets on a fortnightly basis for a full day, and you have been told by the project lead that during these meetings Sharon, a 54-year-old trans employee, is not allowed to use the female bathrooms. What kind of discrimination has been displayed here?

- 1) Age
- 2) Sexual Orientation

3) Gender confirmation/Reassignment

“The correct answer is 3. Regardless of whether Sharon has completed a process to have her gender legally recognised, or even if she is under medical supervision, she is still protected by the Equality Act 2010. The action displayed to Sharon in this scenario would be seen as a violation of her dignity and the creation of a degrading and humiliating situation. Gender identity is one’s own internal sense of self and their gender, whether that is man, woman, neither or both. Unlike gender expression, gender identity is not outwardly visible to others.”

This is inaccurate and misleading. In this example, Sharon is a male employee. The Equality Act includes (at Schedule 3 Part 7) provisions that allow for single-sex facilities, including toilets, changing rooms and hospital accommodation. These provide the necessary statutory defence against both a claim of sex discrimination from excluding men/males or women/females from a service for the other sex (Sharon is not allowed to use the ladies because Sharon is male), and of gender-reassignment discrimination (Sharon feels that being offered alternative facilities is a dignity violation).

Allowing male staff such as Sharon into female facilities (which include not only toilets but changing rooms, showers and communal accommodation) is likely to amount to unlawful discrimination against the women who depend on those facilities. This may also involve women with other protected characteristics, such as religious or philosophical beliefs or disability. The policy also risks conflict that can be experienced as harassment by both parties; both individuals such as Sharon and David who have been led to believe that their presence will be welcomed by members of the opposite sex in spaces where they are undressing and washing; and colleagues who do not welcome this intrusion on their privacy and dignity.

The Equality and Human Rights Commission has published guidance on single- and separate-sex services which makes clear that it is lawful to have a clear policy and to say No to individuals who wish to use opposite-sex facilities.²

Cases including *Earl Shilton Town Council v Ms K Miller*: [2023] EAT and *Ms V Abbas v ISS Facility Services Ltd* [2024] ET illustrate the legal jeopardy of failing to provide adequate toilet and changing facilities for female staff. Several ongoing cases involving NHS bodies relate specifically to policies permitting trans-identifying male staff to use female facilities.

The policy advanced by the training is also likely to put NSHE in breach of the Workplace (Health, Safety and Welfare) Regulations 1992, which mandate that workplace toilets and changing facilities must be provided either on a single-sex basis or in individual lockable rooms.

Current NHS cases relating to single-sex services

- **Faye Russell-Caldicott** has issued an employment-tribunal complaint against NHS England for indirect discrimination on the basis of sex (women), religion (Islam), philosophical belief

²

<https://www.equalityhumanrights.com/equality/equality-act-2010/separate-and-single-sex-service-providers-guide-equality-act-sex-and>

(gender-critical) and disability (PTSD) for having a policy in place which effectively renders supposedly single-sex toilet, changing room and showering facilities mixed-sex.³

- **A group of nurses in Darlington** are bringing a claim of sexual harassment and sex discrimination against County Durham and Darlington NHS Foundation Trust, where they are being forced to share the women's changing room with a male nurse who identifies as a woman.⁴
- **A nurse in Fife** is taking a health board to an employment tribunal after being forced to use a changing room alongside a male colleague who identifies as a woman. The woman was initially suspended by NHS Fife after complaining to her bosses that allowing men who identified as trans to use the room breached the Equality Act, which protects female-only spaces.⁵

³ <https://www.crowdjustice.com/case/single-sex-facilities-at-work/>

⁴ <https://www.telegraph.co.uk/news/2024/10/02/darlington-nurses-fighting-for-women-only-spaces/>

⁵ <https://www.thetimes.com/uk/scotland/article/nhs-worker-nhs-fife-tribunal-trans-rights-nhnk9qjdv>