

## **Caring about Dignity – Same-Sex Care**

### **Executive Summary**

The need for same-sex care and accommodation for privacy, dignity and safety of women in particular has come under attack through: the undermining of sex-based data collection; removal of sex-based language from key documents and replacing with gender, including the NHS constitution; and by the misunderstanding and misapplication of law, including the Equality Act and Public Sector Equality Duty.

Studies show that women receiving care are two to three times more likely to be sexually assaulted as men and that men are 4 times more likely to be the perpetrator despite a predominantly female workforce. Women who have mental health conditions, including dementia, are particularly at risk as they are often unable to bear witness. In 2023 a shocking investigation from the British Medical Journal & The Guardian revealed 12,234 sexual safety incidents against patients were recorded by NHS trusts in England between 2017 and 2022.

This report lays out the issues around same-sex care over 6 sections:

1. The guidance and law on same-sex care and the impact of gender ideology
2. Issues with providers of care – including workforce changes and social care providers refusing to offer same-sex care
3. Specific concerns regarding women and girls with mental health conditions, disabilities and those with particular religious beliefs
4. A summary of facts and figures
5. Recommendations
6. Appendix - The NHS - failure to comply with Public Sector Equality Duty plus other relevant guidelines

Health and social care is something that the vast majority of people will require during their lifetimes. People are often vulnerable when needing care and are currently being coerced into accepting care, accommodation and language that denies them privacy and dignity and compromises safety, especially of women.

We cautiously welcome the recent announcement by the secretary of state regarding a consultation into changes to the NHS constitution including same-sex care and sex-based language, whilst knowing we need to continue to push for changes to social care.

## **1) Guidance and law on same-sex care and the impact of gender ideology**

### **1a. Guidance on same-sex care**

The right to same-sex care and hospital accommodation is being undermined due to institutions not following the law in this area - partly driven by gender ideology.

CQC regulation 10 allows for the provision of same-sex intimate care within the NHS and social care.[1]

#### **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014:**

##### **Regulation 10**

##### **CQC Guidance 10(1)**

When providing intimate or personal care, provider must make every reasonable effort to make sure that they respect people's preferences about who delivers their care and treatment, such as requesting staff of a specified gender/sex

This is relevant to the NHS and social care in people's own homes and in residential homes.

In 2010 the NHS committed to same-sex accommodation in hospitals. Section 1.1 of the current guidance states: [2]

Every patient has the right to receive high quality care that is safe and effective and respects their privacy and dignity. This is one of the guiding principles of the NHS Constitution and is at the core of local NHS visions.

This provision has been undermined by Annex B which allows males who say they are women or non-binary into female accommodation. This will be covered by others in the session and Sex Matters has written a briefing. [3]

The current NHS constitution has included in its first principle:

*"It is available to all irrespective of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status."*

It is unclear why the constitution provides for gender rather than sex as the protected characteristics are otherwise the same as in the Equality Act.

Note on 27/4/2024 there was an announcement that there would be a consultation into a new NHS constitution, with a commitment to sex-based language, same-sex

spaces and services by the Secretary of State Victoria Atkins. See appendix for a more detailed discussion on issues with the current NHS constitution.

### **1b. How gender ideology is undermining the provision of same-sex care**

- Many councils do not collect sex-based data (which they are required to do under the Public Sector Equality Duty) but rather collect data based on gender/gender identity.
  - People for instance have then been told by councils that they're unable to provide same-sex services as they do not collect sex-based data.
  - FOI requests showed that of 33 London Boroughs only 4 collected sex-based data.

“Authorities should take care to undertake their assessment by reference to the protected characteristics set out in the (Equality) act. They should not use concepts such as gender or gender identity, which are not encoded in the act and can be understood in different ways.”

From the Public Sector Equality Duty Guidance [4]

- Some hospitals and health services (e.g., district nurses) are not collecting sex-based data. Several trusts for example use Epic Systems software from the US which only collects 'legal sex' not biological sex and records those without a trans identity as 'cisgender' including babies. [5]
- Carers, doctors and other healthcare workers are being allowed to self-declare their gender.

“The General Medical Council (GMC) is allowing doctors to change their 'gender' on the GMC register: Baroness Hayter said: “While welcoming the ability of any doctor to live in their chosen gender, this must not overwrite patients' rights. Any patient must be able to ask for a medic of their own biological sex and not be faced, without their consent, by a biological man. I am concerned that the GMC, by putting doctors' interests above those of patients, is failing in its statutory duty.” [6]

- There have been significant increases in the number of transgender midwives and nurses in the NHS for example.
  - In 2018 there were 3618 transgender nurses on The Nursing and Midwifery Council;
  - In 2023 there were 6407 transgender nurses on The Nursing and Midwifery Council. [7]

- The 'morality' behind asking for same-sex care is being undermined with trans activists in the Scottish GRR debate comparing it with racism and somehow morally unacceptable. In addition, people think due to shortages in the care workforce people should 'just be grateful' they have any care.
- See appendix for further information regarding the Public Sector Equality Duty.

## **2. Issues with providers of care**

- Women have been denied care on the basis of asking for same-sex care, see case study below:

*“A woman whose surgery was cancelled because she demanded same-sex care has claimed she could have been killed by the delay. Teresa Steele was informed over email that her operation at the Princess Grace, a private hospital in central London, which specialises in women’s health, had been scrapped as a result of her request that only biological women be involved in her intimate care and later developed an abscess.”*

*“Emails between staff, seen by The Telegraph, said that they “perceive the patient’s request and rationale as a discrimination on gender and sex against... hospital employees”.*

Reported in The Telegraph, Hayley Dixon, 6/Aug/2023 [8]

### **2a. Providers refusing to provide same-sex care**

- Some social care providers will not take a client on unless they sign a contract with a clause that they will accept male or female carers.
- Care providers have refused to take on clients that want female-only care. Some women are being left with the ‘choice’ of male carers or no care.
- Some providers will guarantee female only care for the morning washing/dressing but tell clients that they cannot guarantee for other scheduled care, which still leaves vulnerable women at risk.

*“A male carer contacted us who worked for a care agency from 2017-2019. He told us people had to agree to having male or female carers under the rules of the care provider, otherwise the provider refused to provide a care package. He told us: “If a woman said no to a male carer the agency would insist on continuing to send men round to ‘try to get the woman to change her mind’.”*

Testimony to Caring About Dignity from a male carer [9]

*"I've been disabled for over half my life now. My late teens were plagued by doctors' visits. I started having carers in my early 20s, just enough time to eat and wash with a bath three times a week. I was also a victim of sexual abuse, it led to some awkward conversations with those caring for me, eventually I declined all input and social care didn't ask why.*

*Fast forward through an abusive marriage I found myself with care staff again. Not all companies understood my need for same sex care. I had one company tell me it was illegal, another stated "they'd try." Some seemed to get it but I'd still find myself with males being sent for the odd shift. This would be declined. Complaints never went down well, I'd be told of staff shortages, sickness or holiday. Even disclosing my past (not that I should have to) didn't always help me."*

Testimony to Caring About Dignity from a female sex abuse survivor [9]

## **2b. Workforce – increasing number of males**

- The workforce is predominantly female however more males are entering the workforce. Reasons include:
  1. changes to recruitment strategies, actively targeting men for 'diversity'
  2. changes to benefits system – people had to accept work if available in their area and
  3. changes to care visa system – not allowing families (32% of care visas are going to males).
- In 2012 84% of the carer workforce was female; by 2022 that had fallen to 81%. [10]

## **2c. Professionalisation and register for carers**

In Scotland they are professionalising the care industry now with a register for carers but there is inconsistency across the UK. [11] Doctors and nurses can be struck off for misconduct from their registers, even if they are not found guilty of a crime in a court of law, however in England no such register exists for carers and abusive carers have moved providers and abused again.

*“Clive Treacey was allegedly groomed and sexually abused at the age of 23 in a private care home in Cheshire and then moved to Staffordshire where his abuser was able to access him again, it was claimed. Both Mr Treacey and his alleged abuser have since died.”*

Victim Clive Treacey’s story [12]

*“A care worker who raped, sexually abused and filmed grotesque videos of an unknown number of elderly vulnerable women across two care homes has been jailed.” And unfortunately these women were denied justice for so long due to their vulnerabilities...a "mistake" by police officers - three of whom are now facing a misconduct investigation - meant the care worker was able to flee the country before coming back to the UK to work at another care home, where he was able to abuse more vulnerable women.”*

The case of the abuser Teo-Valentin Todorovits [13]

### **3. Patients and those receiving care**

Some people receiving care are particularly vulnerable to potential abuse including those with learning disabilities, mental health conditions, the elderly and children. In addition, gender ideology is undermining freedom of religion in this area.

#### **3a. Special Schools**

- Parents with daughters who attend special schools want to ensure same-sex care for their daughters. They also need to be able to guarantee the sex of their carer for respite care and forever homes.

“Our severely learning-disabled sixteen year-old daughter, Helen\*, is entirely dependent on others for intimate care. Nearly two years ago, her special school sent round a new intimate care policy, which had been ratified by its governing body:

*“A decision has been made to add cross-gender consent from the personal and intimate care policy, which is in line with legislation and guidance relating to equality and diversity”*

...that would allow male members of staff to take Helen to the loo, one-to-one, behind a closed door” [14]

#### **3b. Patients with mental health conditions and disabilities**

- Patients with mental health conditions and those who are non-verbal are particularly vulnerable; they are either unable to bear witness or may be considered unreliable witnesses in the event of assault.

Cassie is an autistic woman who has lived in services for people with learning disabilities and autism since she was a child. In her fifties she was found to be HIV positive (2016). A safeguarding meeting confirmed Cassie did not have the capacity to consent to having sexual relations and the perpetrator has never been identified. See Brent Safeguarding Report. [15]



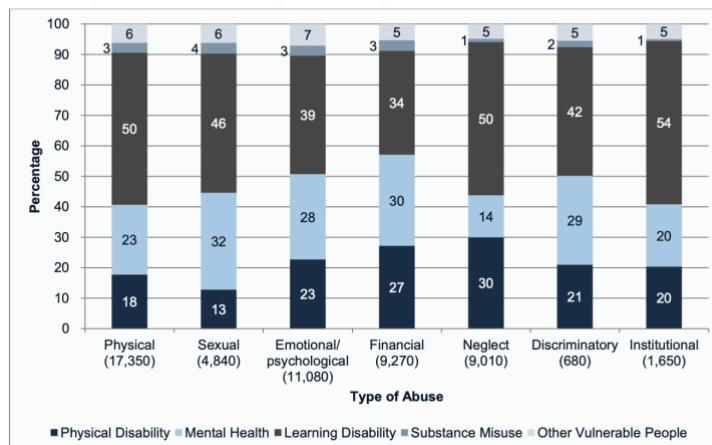
A carer who was caught raping a 99-year-old woman with dementia in a Lancashire care home by a hidden camera has been sentenced to life in prison.

Phillip Carey's crimes were brought to light after a recording device was installed in the victim's room by her family who had noticed a change in her behaviour. The woman, who was living in a home, stopped letting her loved ones kiss and hug her during visits.

She often begged them not to leave her alone in the home, warning “they will hurt me”. [16]

- “Sexual abuse is more likely to affect Mental Health (32 per cent) or Learning Disability (46 per cent) clients than other client types.” Abuse of Vulnerable Adults in England report [17]

Figure 3.15: Nature of alleged abuse by client type of vulnerable adult, 2012-13  
(For vulnerable adults aged 18-64 only)



### 3c. Religious Beliefs

- Pam Gosal, MSP, raised the question of same-sex care and religion during the Scottish GRR debate frequently pointing out that for women from certain religions same-sex care was part of their religion. Having a male who identified as trans provide care instead she said would ‘break their religion.’ Wanting same-sex care on the basis of religious belief was compared with racism.

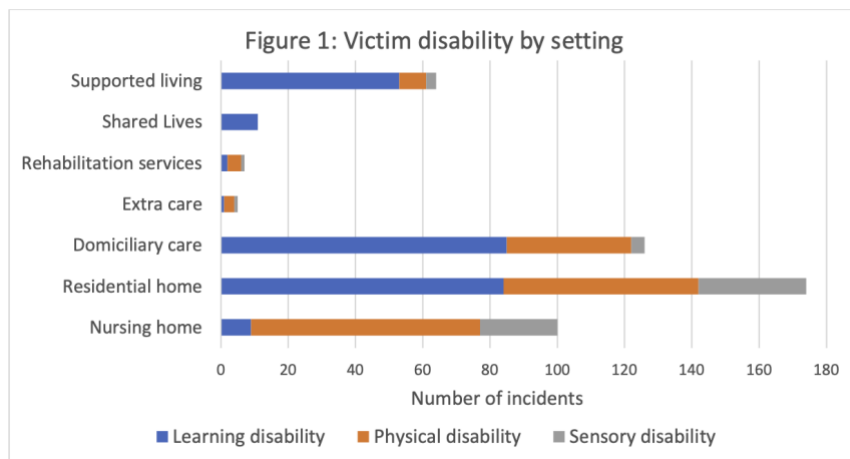
Pam Gosal MSP: *“A couple of weeks ago, I asked some witnesses whether, if a doctor is trans, they have to tell an Asian—or any—female that they are, and I was told that they do not have to. The doctor would therefore be breaking the woman’s religion, because the woman would not see or know that—unknowingly, her religion would be broken.”*

Naomi McAuliffe (Amnesty): *“I know that health professionals have to deal on a daily basis with people who have certain views that affect who they want to be treated by. The right to freedom of faith is also about freedom of thought, so, for example, someone with racist views might not want to be seen by a doctor of colour.”*

Equalities, Human Rights and Civil Justice Committee; 16 May 2022 [18]

#### 4. Important Facts and Figures

- Report into 172,000 safeguarding concerns in adult social care in England 2012-13 showed 5% of abuse was sexual (6,750 cases). In the same report: [17]
  - Of the sexual abuse cases, women who received care were twice as likely to suffer sexual abuse than men (6% females : 3% males);
  - Men are 4 times more likely to be perpetrators than women (despite majority female workforce);
  - Of those who suffer sexual abuse, 32% have mental health conditions and 46% learning disabilities which can limit their ability to bear witness;
  - Alleged abuse was more likely to occur in the vulnerable adult’s own home (39% of all locations) or a care home (36%). The source of harm was most commonly reported as a social care worker (32%).
- Report discussing sexual violence against the elderly showed: [19]
  - Rapes of victims aged 60+ (2009-2013) found approx. 20% occurred in a care home and most offenders were other residents or carers;
  - At one rape centre in Manchester, in rape victims aged 70+, 95% were female; of those regarded as more frail, 77% had dementia and were raped by care givers or care residents. Typically, only 16% of victims report rapes.
- More than 6500 rapes and sexual assaults have been recorded in hospitals in England and Wales, over nearly four years, with only 4.1% of suspects known to have been charged (likely to be lower for rape charges). [20]
- In 2023 an investigation by the British Medical Journal & The Guardian revealed 12,234 sexual safety incidents against patients were recorded by NHS trusts in England between 2017 and 2022. [21]
- A 2021 report “Sexual Incidents in Adults Social Care” showed women were over three times more likely to be affected by sexual incidents than men. Having limited mental capacity was also a risk factor (see chart). [22]



- A 2019 report by Prof. Searle for the Professional Standards Authority underlined much higher rates of sexual misconduct in male health professionals compared to females examining fitness to practice hearings.
  - 88% of total perpetrators were men;
  - 100% of the doctor case perpetrators were male (despite accounting for only 54% of doctors)
  - 84% of Allied Professionals were male (despite accounting for only 30% of the allied professional workforce)
  - 80% of the nurse perpetrators were male (despite only 11% of nurses being male). [23]

## **5. Recommendations**

- Data collection - collection of data on sex to be mandatory for both patients and healthcare providers.
- All relevant forms should ask if the patient/those receiving care would like to request the sex of their carer as standard, inc. for intimate care.
- Training for councils commissioning social care in relevant law and guidelines.
- Tougher penalties for providers who do not provide same-sex intimate care when requested.
- Stop health and adult social care providers inserting clauses that people must accept carers of either sex plus stop allowing providers to deny care on the basis of people requesting single-sex care e.g., refuse registration by CQC, remove care contracts.
- Registration scheme and professionalisation of care industry. Include care register so that carers guilty of misconduct (but cannot be criminally prosecuted) are struck off. Professionalisation to improve staff retention; move away from casual labour and reduce need for visas.
- Provide more choice by using a tax-free voucher scheme similar to that for child-care. Those in work inc. with dependents can buy 'adult social care vouchers' (e.g., pay for private carers, top up social care).
- New NHS constitution touted to commit to same-sex spaces, services and sex-based language should also be rolled out to social care.
  - Remove Annex B and commit to same-sex accommodation in NHS.
  - Women's groups and Patients' groups have not been properly represented in recent NHS consultations. The consultation process on amendments to the NHS Constitution must be run properly and fairly in accordance with the Public Sector Equality Duty (PSED).
  - Future NHS policies be checked by an independent body for compliance with Cabinet Office Consultation guidelines prior to implementation.
  - PSED must be enshrined more thoroughly in the NHS Constitution than at present, this includes using sex not gender.

## **References:**

[1] CQC Guidance 10: <https://www.cqc.org.uk/guidance-providers/regulations/regulation-10-dignity-respect>

[2] NHS Guidance on single-sex accommodation: <https://www.england.nhs.uk/statistics/wp-content/uploads/sites/2/2021/05/NEW-Delivering-same-sex-accommodation-sep2019.pdf>

Annex B can be found within the NHS guidance above.

[3] Sex Matters Guidance on Annex B: <https://sex-matters.org/wp-content/uploads/2021/10/Reviewing-Annex-B.pdf>

[4] Public Sector Equality Duty Guidance: <https://www.gov.uk/government/publications/public-sector-equality-duty-guidance-for-public-authorities/public-sector-equality-duty-guidance-for-public-authorities>

[5] The Epic Systems software details: <https://sex-matters.org/posts/healthcare/an-epic-crisis-is-unfolding-in-the-nhs/>

[6] Telegraph article on doctors changing gender: <https://www.telegraph.co.uk/news/2024/02/10/trans-doctors-register-change-gender/>

[7] FOI on transgender nurses and midwives: [https://www.whatdotheyknow.com/request/numbers\\_of\\_trans\\_identifying\\_nur#incoming-2575822](https://www.whatdotheyknow.com/request/numbers_of_trans_identifying_nur#incoming-2575822)

[8] Teresa Steele's story: <https://www.telegraph.co.uk/news/2023/08/06/teresa-steele-same-sex-care-denied-surgery-nhs-london-hca/>

[9] For caring about dignity testimonies please see: <https://www.caringaboutdignity.org>

[10] Workforce data on carers (including male:female split and visa data): <https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-State-of-the-Adult-Social-Care-Sector-and-Workforce-2023.pdf#page=87>

[11] Scottish social services council: <https://www.sssc.uk.com/registration/>

[12] Case of Clive Treacey: <https://www.independent.co.uk/news/health/nhs-report-decade-failings-vulnerable-man-b1971909.html>

[13] The case of the abuser Teo-Valentin Todorovits: <https://www.independent.co.uk/news/uk/crime/teo-todorovits-care-home-rape-elderly-b2420253.html>

[14] Helen's story: <https://www.transgendertrend.com/severely-learning-disabled-girl-sex-based-rights-under-threat/>

- [15] Cassie's story <https://legacy.brent.gov.uk/media/16411756/adult-b-final-report-nov-2018.pdf?ref=caringaboutdignity.org>
- [16] Philip Carey rape of 99 year old woman: <https://www.itv.com/news/granada/2022-02-08/hidden-camera-caught-carer-raping-99-year-old-woman-with-dementia>
- [17] Abuse of Vulnerable Adults in England report: <https://files.digital.nhs.uk/publicationimport/pub13xxx/pub13499/abus-vuln-adul-eng-12-13-fin-rep.pdf>
- [18] Equalities, Human Rights and Civil Justice Committee; 16 May 2022  
<https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13796>
- [19] <https://www.wearehourglass.org/sites/default/files/inline-files/Sexual%20Violence%20and%20Assault%20against%20older%20people%20in%20hospitals%20in%20England%202021.pdf>
- [20] University of Reading report into rapes in hospitals: <https://www.reading.ac.uk/news/2023/Research-News/6500-hospital-sexual-assaults-in-four-years-according-to-new-report>
- [21] BMJ investigation: <https://www.bmj.com/content/381/bmj.p1105>
- [22] Sexual Incidents in Adults Social Care Evidence review commissioned by the Department of Health and Social Care: <https://www.scie.org.uk/safeguarding/evidence/sexual-incidents-adults-social-care/>
- [23] Prof. Searle's PSA report: [https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/sexual-misconduct-in-health-and-social-care-understanding-types-of-abuse-and-perpetrators-moral-mindsets.pdf?sfvrsn=630f7420\\_2](https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/sexual-misconduct-in-health-and-social-care-understanding-types-of-abuse-and-perpetrators-moral-mindsets.pdf?sfvrsn=630f7420_2)

## Appendix

### 6. The NHS - failure to comply with Public Sector Equality Duty

The NHS is a public authority under Schedule 19 of the Equality Act 2010 (EqA), and so is subject to public sector equality duty (PSED) under s. 149 of the EqA. This imposes an obligation on the NHS to have due regard, and, amongst other things, to eliminate discrimination, harassment and victimisation or other conduct prohibited by the Equality Act.

The NHS constitution has included in its first principle:

“It is available to all irrespective of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status.”

It is unclear why the constitution provides for gender rather than sex as the protected characteristics are otherwise the same as in the EqA.

Also, the Handbook to the Constitution states (inaccurately) as regards the first principle:

“The protected characteristics set out in this principle are the same as those listed in the Equality Act 2010”.

How did the NHS Constitution come to be at odds with both the Equality Act and its own Handbook?

#### Erasure of women’s sex-based requirements in healthcare

Throughout the NHS, we see that the omission of sex in its Constitution has carried through into a pattern of disregard for the protected characteristic of sex and the systemic erasure of women as a sex-class, which manifests in the following ways:

1. The removal of female sex-based language and descriptors in healthcare literature (male descriptors remain in place); and
2. The failure to gather sex-based data; and
3. Coercing of women to accept opposite sex care against CQC Rule 10; and
4. The removal of women’s spaces in healthcare, in particular, same sex wards.

#### The development of healthcare policy which erases sex – how does this arise?

NHS policies are being developed which are in breach of PSED by excluding Sex, in the same way as the incorrectly worded NHS constitution.

One mechanism that is used by bad players to push through policies that are hostile to women is to ensure that women’s interest groups and stakeholders are excluded from policy consultation. Excluding a group which is likely to be affected by a policy from participation in consultation is in direct breach of the 2012 Cabinet Office consultation guidelines.



<https://www.gov.uk/government/publications/consultation-principles-guidance>

For instance, during the recent review of Annex B, the policy developed by NHS England, which enables males to self-identify as women to gain access to women's wards, women's groups complained bitterly that they were excluded until the last minute and only allowed to give minimal input. The consultation was dominated by trans groups. The Annex B policy has been under review for at least two years and remains unaltered, despite a public outcry.

A second mechanism used to erase women from policy considerations is to omit to conduct Equality Impact Assessment which includes protected characteristic of Sex.

The Nottingham NHS Trust transgender inclusion policy is an example of the result of a failure to conduct an Equality Impact Assessment (at all), resulting in a complete disregard to the needs women patients:

*“Just as the Trust will not adapt practice in light of Racist concerns expressed as discomfort, so the Trust will not adapt practice in light of Transphobic concerns expressed as discomfort. This will include such things as use of toilets, changing facilities, and single sex accommodation”.*

This is a typical example of the cavalier disregard verging on hostility that many NHS trusts towards women's privacy, dignity and sexual safety.

## **Conclusion**

The implementation of policies such as Annex B, which are hostile to women, has severely undermined the safety of women patients. The expectation that women accept male staff for intimate care is another erosion of the boundaries of women patients. In recent years, attacks on women patients on NHS premises has reached an industrial scale; this recent BMJ investigation recorded more than 35,000 sexual assaults over a five-year period:

<https://www.bmj.com/content/381/bmj.p1105>

Changes are needed to re-establish women's boundaries and enshrine the right for same-sex care and accommodation within the NHS constitution. We cautiously welcome the recent announcement by the secretary of state regarding a new NHW constitution whilst knowing we need to continue to push for similar changes to social care.

## **Additional CQC guidance on regulations that have relevance to same-sex care**

**Regulation 9: Person-centred care:** *Providers must do everything reasonably practicable to make sure that people who use the service receive person-centred care and treatment that is appropriate, meets their needs and reflects their personal preferences, whatever they might be.*

**Regulation 11: Need for Consent:** *Consent must be treated as a process that continues throughout the duration of care and treatment, recognising that it may be withheld and/or withdrawn at any time.*

**Regulation 13: Safeguarding service users from abuse and improper treatment.** *Care or treatment for service users must not be provided in a way that...is degrading for the service user, or significantly disregards the needs of the service user for care or treatment.*

**Regulation 18: Staffing:** *Providers should have a systematic approach to determine the number of staff and range of skills required in order to meet the needs of people using the service and keep them safe at all times.*

**Regulation 19: Fit and proper persons employed.**

**Regulation 20: Duty of Candour.** This is a newer regulation that was written after the Mid-Staffordshire scandal and is about the requirement for honesty when dealing with complaints. It means for example that if a female member of staff is requested but a male is provided, the integrity of the response is under scrutiny. “Lucy is a woman” directly fails to meet this standard and puts them in a very difficult position.

<https://www.cqc.org.uk/guidance-regulation/providers/regulations>

In addition, there is the **Mental Capacity Act 2005**. Healthcare professionals and carers make best interest decisions on behalf of people who lack capacity with best available evidence involving if possible, those who know the patient, and the patient’s wishes insofar as they were/are known. If a care provider is not led by these principles but rather by efficiency (for instance providing a man rather than a woman), the consequence could be very serious for them. If a patient who lacks capacity is harmed by a male carer, the provider could be liable to be charged under section 44 which is the new criminal offence of Wilful Neglect, with possible jail sentence of up to 5 years and a fine. Section 44 was also created in response to the Mid-Staffordshire scandal.

<https://www.legislation.gov.uk/ukpga/2005/9>