



Dear Ed Humpherson,

I am writing to you with my concerns that data producers are replacing data on sex with data on gender identity in ways that do not meet the expected standards outlined in the Code of Practice for Statistics.

Work is underway across the Government Statistical Service (GSS) to harmonise measures of "sex and gender" in data collection across government. The project page called ["Sex and Gender harmonisation guidance"](#) states that *"We recognise that sex and gender are distinct concepts but as they are closely related, they are presented together on this page"*. It then goes on to list some related strands of work on both concepts. One such area of work is the NHS England Unified Information Standards for Protected Characteristics (UISPC). It explains that *"NHS England are currently carrying out an equality monitoring scoping project to assess the need for a unified information standard for the nine characteristics protected under the Equalities Act (2010). These include sex, gender reassignment, and sexual orientation"*.

There is also a GSS project page called the ["Gender Identity Data Harmonised Standard"](#). This page confirms that *"this standard is about gender identity. It does not collect information on sex"*. Question placement is discussed *"We anticipate that a gender identity question may be asked with a question on sex as some data collectors may want to collect data on the protected characteristic of sex, female or male, in addition to data on gender identity"*. The Gender Identity Standard is based around asking whether the gender someone identifies with the same or different to their sex registered at birth.

Despite there not yet being an agreed Data Harmonised Standard for sex, it is nonetheless clear that the GSS harmonisation team understands sex and gender identity to be two distinct concepts that will require separate and distinct Information Standards for data collection.

I have therefore been surprised to learn of NHS Information Standards being updated such that the data category for sex is being **replaced** with a 'gender identity' category. On 21st March 2021 the Data Coordination Board, acting under delegated authority from the Secretary of State for Health and Social Care, [approved a change to the information standard for mental health](#) for publication under section 250 of the Health and Social Care Act 2012. From 1st October 2021 all NHS service providers for mental health will be legally and contractually obliged to implement this Information Standard.

Until now there has always been a single data category with two options male and female. However, this will now be replaced by a category called "gender identity". An additional category will also be added to capture information about whether "gender identity" is the "same at birth". The [Technical Output Specification shows](#) the data entry choices for the Gender Identity category. These have been expanded beyond the sex binary of male and female. Gender identity options will now include 1) Male including trans man 2) Female including trans woman 3) Non-binary 4) Other. This is a significant change that appears to be out of step with the GSS harmonisation project.

As set out in the [OSR draft guidance published on 25th February 2021](#), if a change is made to data collection "*a clear explanation of the change should be published, with evidence of the rationale and, wherever possible, the analysis that informed the change.*" However, the reasons cited for making the changes are not consistent with changes being made. The [change requirements list](#) accompanying the new Information Standard says the change is designed to:

- **"support(s) a better understanding of individuals gender identity alongside their biological sex"**. However, this change does not support a better understanding of sex, quite the opposite. While in some cases it will be possible to elucidate birth sex from the answers given to the two gender identity questions this will not always be the case. Information regarding the birth sex of individuals who consider their gender identity to be 'non-binary' or 'other' will be lost.
- **"link with the changes being made to the 2021 census"**. This justification is now out of date. The 2021 census was required by the high court to collect data on sex (not gender identity) alongside information about whether gender identity matches sex at birth. The new MHSDS format therefore will not link with the data categories in the 2021 census.
- **"allow monitoring and reporting against the NHS obligations under the Equalities Act"**. Sex is a protected characteristic under the Equality Act but gender identity is not. Collecting data on gender identity without a question on sex does not aid equality monitoring. How can the NHS comply with its legal obligations under Public Sector Equality Duty to show "due regard" to eliminate discrimination due to sex if it has no data category by which to capture information on it. This is particularly important for official datasets relating to mental health and autism services where there is good evidence that gender diversity is over-represented. There are significant differences in the incidence of various mental health conditions by sex and by age, so sex remains a critical variable to collect. Accurate data on sex will also be important when assessing the requirement for and problems occurring on single-sex mental health wards.

It is becoming increasingly clear that significant changes are being made to the way data on sex is collected in advance of any agreed sex data harmonisation standards. Stakeholder engagement may be happening, but a full range of views and perspectives are not being heard. Experts and advocacy groups who support the retention of sex as an important data category separate to and distinct from self-declared gender identity are either not invited to participate or do not feel safe to air their views. As such a distorted consensus about how changes should be made is used to drive the changes forward. There is an urgent need for OSR to develop best practice in this area before the ability to collect good data on sex is lost.

I would like to request that OSR investigates the process that led to the MHSDS specification being changed. Which stakeholders were consulted and what work was done to fully evaluate the impact of not collecting information in line with the lawful definition of sex as a protected characteristic as described in the Equality Act 2010? Has the NHS England Unified Information Standard for the protected characteristic of sex now been finalised or is it still under development?

Best wishes

Dr Nicola Williams

Director, Fair Play For Women.