

APPENDIX 2**Frequently Asked Questions on Same-Sex Accommodation**

- 1. Is it acceptable to set a time limit before recording mixing as a breach of the standard, e.g. two hours, four hours, twelve hours?**
 - A) In a ward, this is not acceptable. The breach occurs the moment the patient is placed in mixed-sex accommodation. However, in a high acuity area (as described in Annex A, Delivering Same Sex Accommodation, NHSE/I, Sept 2019), a patient who is 'fit' to be stepped down from level 2 and 3 care, should be transferred within four hours of being ready to be moved. Transfers should not take place between the hours of 10.00pm and 7:00am. Annex A also confirms that when a patient is in an assessment unit and a decision to admit is made the transfer should occur within four hours of that decision being made.
- 2. Are assessment units exempt?**
 - A) Patients in assessment units are excluded until a decision to admit is made, after which they will be counted as a breach if not admitted within four hours.
- 3. Are critical care units exempt?**
 - A) Within critical care, some patients may have a clinical need to be in that environment, and therefore should be recorded and monitored locally as a justified breach. Annex A outlines the procedure for managing critical care breaches. For example, in an eight-bedded critical care unit there are four male patients and four female patients. This is to be recorded locally as eight patients in justified mixing. One of the male patients becomes ready to be transferred to a level 1 unit, but there is no available bed for his transfer: this would then become an unjustified breach four hours after he is ready to be moved. As only this patient is classed as an unjustified breach, this would be counted as one breach only.
- 4. If a patient in critical care becomes an unjustified breach at 9.00pm and is not transferred before 10pm, does that count as a separate breach at 7.00am?**
 - A) Breaches are not counted between the hours of 10.00pm and 7.00am. In this case, the four-hour period from the patient being ready to transfer would start again from 7.00am, any previous count before 10.00pm would be disregarded. Given this is the same occurrence the breach would only be reported nationally once.
- 5. If a patient needs to be admitted to a bed on a ward in the middle of the night, and the only option is to put them in a mixed-sex bay, would this be a breach?**
 - A) Yes, this is still a breach and should be reported. However, you must admit patients, including transfers, even if you can't provide the right gender bed.
- 6. Does the MSA policy apply to children? Is there an age limit at which a breach can occur?**
 - A) It is recognised that for many children and young people, clinical need and age take precedence over gender considerations. Children and young people should therefore have the choice whether their care is segregated according to age or gender – hence, mixing may be acceptable. If the child's preference cannot be met and there is no

clinical justification to support the patient being placed in mixed-sex accommodation, this should be recorded as a breach. If the child's request is to be with others of a similar age and this results in a mixed bay, then all patients in that bay must choose to be in mixed-sex accommodation otherwise the mixing of all patients should be recorded as breaches. There is no specific age limit – for very young children, the wishes of the parent may be sought.

7. How do I record breaches if a patient has been moved several times?

- A) All occurrences of mixing should be recorded and reported. During a stay in hospital, if a patient experiences mixing on multiple wards, each occurrence of mixing should be recorded.

8. How do I determine and record patient choice?

- A) On the rare occasion where, for example, a husband and wife choose to be placed together, this should be recorded in both their notes. The breach should still be recorded locally but as justified due to the patient choice. Where a patient has specifically indicated that they wish to be cared for in mixed-sex accommodation, only that patient should not be recorded as a breach, (but all other patients would be in breach if this is not their personal choice). Where patient choice occurs, the privacy and dignity of all patients should be protected.

9. Mixing has occurred in a multi-bedded bay. Do I record all patients as breaches or just the one patient that 'triggered' the mixing?

- A) All patients in the bay are experiencing mixed-sex accommodation and therefore they should all be recorded. Where the bay is within a critical care area the rules about recording breaches in that area should be applied, so breaches are only counted for those patients who have waited for over four hours from being assessed as well enough to stepdown from level 2 and 3 care and ready to be transferred.

10. In an independent sector treatment centre, how do I record my NHS-funded patients that are in breach?

- A) Using an example of a four-bedded bay which is mixed-sex accommodation: three patients are privately funded and one patient is NHS-funded. Only the NHS-funded patient is reportable. Private patients can trigger a breach if they are sharing with NHS patients, but only the NHS-funded patients should be reported as breaches nationally.

11. It is not possible for patients to be placed in mixed-sex accommodation at our organisation, do we still need to submit a data return?

- A) Yes, all providers with the facilities to admit 10 or more patients at any one time are included in the data return - simply submit a 'nil' each month. Please see the reporting guidance.

12. In a six-bedded bay, there are four male patients and one female patient. I count this as five breaches. Then an extra female patient is added into the same bay as the four male and one female patient who have already been counted as a breach in that bay. Do I count everyone again or just the extra female patient?

- A) Regardless of whether an extra male or female patient is admitted it is counted as one additional breach. This means there are now six breaches.

13. After initial mixing in a four-bedded bay, same-sex accommodation is achieved in the bay. However, later the same day a new spell of mixing occurs which involves two of the patients from the original scenario – how is this counted?

- A) In the above situation, the first set of (four) breaches is 'cancelled' when the bay becomes same-sex although they would have already attracted a fine. However, when the later mixing occurs, we still have two of the original patients having their privacy and dignity breached (for the second time that day), hence a further four breaches would be reported nationally. A fine would however only be applicable to the two new patients – as the two involved in the original mixing would already have attracted a fine.

14. Can we turn patients away if same-sex accommodation is not available?

- A) No, the priority will always be to admit patients and treat them promptly. If you fully understand your capacity and demand this should not happen except in extreme circumstances, in which case you should ensure they are placed in same-sex accommodation as soon as possible.

15. Can visitors cause a breach?

- A) No, visitors cannot trigger a breach of the mixed-sex accommodation standard as they are not admitted patients. More pertinently, though, they cannot cause an admitted patient to breach the standard.

16. How can an organisation cope with fluctuations in the proportion of male and female patients admitted?

- A) Most fluctuations in flow can be predicted and accommodated. It is important to understand the anticipated flow of unscheduled patients into your unit so you can manage it appropriately. Reviewing previous admissions patterns for the number of male and female patients will help.

17. How do we position eliminating mixed-sex accommodation in the long list of clinical and organisational priorities?

- A) Protecting patients' privacy and dignity is integral to good quality patient care and should be part of an organisation's overall ethos and approach.

18. How can I ensure that the wishes of all patients in an area or on a ward/bay are considered when accommodating the wishes of a small number of those patients?

- A) Staff should remember that, under the Equalities Act and the Public Sector Equality Duty, it is a legal requirement to ensure that trans people are not discriminated against. This guidance clearly states that trans and non-binary people should be accommodated in line with their stated gender identity. In all cases staff should communicate to all patients and or their carers the situation that arises, ensuring sensitivity to all views and acting accordingly to protect the privacy and dignity of all patients. Where the situation, for example, relates to trans patients, staff should do everything they can to respond to the wishes of all patients, while still protecting the dignity and legal rights of the trans person. There may be some circumstances where it is lawful to provide a different service or exclude a trans person from a single sex ward of their preferred gender but only if this is a **proportionate means** of achieving a **legitimate aim**. Any decision to do this must therefore be made on a case-by-case basis, and based on:

- an objective and evidence-based assessment of the circumstances and relevant information
- respecting the rights and needs of the trans person and the detriment to them if they are denied access and balancing that against the needs of other service users and any detriment to them if the trans person is admitted.

(NHS England and NHS Improvement – Delivering Same Sex Accommodation - September 2019)

SAMPLE ONLY