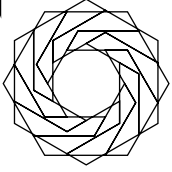


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# Annual Delegate Conference 2021

NIPSA Annual Delegate Conference  
Online

## Conference Paper No.1

Gender-Neutral Toilet Facilities in Workplaces



# Gender-Neutral Toilet Facilities in Workplaces

## 1. Introduction

- 1.1 At the 2018 Annual Delegate Conference the following motion was remitted:

*'With more and more people no longer defining their gender in a binary manner and recognising NIPSA's commitment to equality and diversity, we call upon the incoming General Council to campaign for the introduction of gender-neutral toilet facilities in all Government buildings.'*

- 1.2 The motion was remitted at conference because of one of the concerns raised by delegates was around safe spaces for people who may be experiencing harassment, domestic and sexual violence.

- 1.3 The General Council in considering the motion agreed to refer it to the NIPSA LGB&T Group for advice on how best to take forward the terms of the motion. A recommendation from the LGB&T Group to produce a conference paper to allow for a more informed debate to take place at this year's conference was endorsed by the General Council.

- 1.4 At the 2019 Civil Service Group Conference the following motion was also remitted on the basis of the decision taken at 1.3 above:

*'NIPSA styles itself as the leading public sector union and it is, therefore, with this in mind that we call upon the incoming Civil Service Group Executive Committee to campaign for the introduction of gender-neutral toilet facilities in all buildings which are used by the Civil Service.'*

*This will go some way to recognising the changing demographic of the Civil Service in the 21st century and addressing the needs of a growing number of our members.'*

- 1.5 This paper draws together information gained through qualitative and quantitative research. Evidence and best practice was gathered from organisations such as Transgender NI, Stonewall, Equality Commission for Northern Ireland, Education Authority, the Northern Ireland Civil Service and TUC.

- 1.6 This Conference Paper sets out the case for the introduction of gender-neutral toilet facilities in workplaces to inform the discussions at Conference.

## 2. Background

- 2.1 Trans communities have been in existence for thousands of years in many different cultures across the world. Through colonisation, Western empires promoted and enforced a rigid gender binary in order to increase productivity and create a clear division of labour to complement their system of capitalism. Gender diverse identities including 'Two Spirit' in Native American culture, 'Hijra' in indigenous Indian cultures and many others have existed for millennia. In Western cultures, we are only recently developing the language to discuss and express these kinds of identities more widely, but they have existed and organised in our societies for many years. Trans women, especially trans women of colour, have consistently been at the heart of LGBT+ and workers rights movements, and ensuring access to facilities, goods and services for trans people of all genders should be a priority for any trade union.

- 2.2 In Britain, issues around trans inclusion have been sensationalised by the media, the political class, and a small minority of those who don't support human rights. Many of the arguments against inclusion are merely recycled from the era of the criminalisation of homosexuality and, eventually, the implementation of Section 28 (Thatcher's homophobic government act banning the promotion of homosexuality as "acceptable", the legacy of which is still felt today). During this public discourse, lesbian, gay and bisexual people (in particular gay men) were portrayed as 'predatory', 'dangerous' and 'contagious' - these exact arguments and words are used to describe particularly trans women and children in this new era of acutely transphobic bigotry. Pontifications around the "social contagion" of trans youth, the "predatory" nature of trans women and the "dangers" that trans movements pose to society are not just unfounded but actively harmful, and should be left in the rubbish can of history alongside Section 28.

### 3. Legislative Framework

- 3.1** It is important to note this section references specific legislation and, although the terminology is now considered outdated, the language used below reflects that of the legislation. More up to date and inclusive terminology has been used elsewhere throughout this paper.
- 3.2** The **Sex Discrimination Gender Reassignment Regulations (Northern Ireland) 1999** extended the **Sex Discrimination (Northern Ireland) Order 1976** to make it unlawful to discriminate on grounds of gender reassignment in employment and training. It is unlawful to treat a person less favourably on the grounds that she or he intends to undergo gender reassignment, or is undergoing gender reassignment, or has at some time in the past undergone gender reassignment. The regulations cover direct discrimination, victimisation and harassment in employment or training on the grounds of gender reassignment.
- 3.3** The **Sex Discrimination (Amendment of Legislation) Regulations 2008** amended the **Sex Discrimination (Northern Ireland) Order 1976**. It introduced protection for individuals in Northern Ireland from direct discrimination on grounds of gender reassignment in the provision of goods, facilities, services or premises.
- 3.4** The **Gender Recognition Act 2004** allows binary trans people (i.e. trans men and trans women, non-binary and intersex people are not yet included in any legal recognition) who are able to satisfy the Act's evidential requirements to apply to a Gender Recognition Panel to seek full legal recognition. If a Gender Recognition Certificate is issued, and the person's birth was registered in the UK, they will be able to obtain a new birth certificate which does not disclose the fact that they have changed gender.
- 3.5** The **Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2016** extended the scope of protection in the **Sex Discrimination (Northern Ireland) Order 1976** to make indirect discrimination unlawful. This occurs where an employer applies a provision, criterion or practice which is discriminatory in relation to gender reassignment and which cannot be justified.

### 4. The Case for the Introduction of Gender-Neutral Toilets in Workplaces

- 4.1** There are many existing transgender, non-binary and intersex union members and workers for whom more accessible gender-neutral facilities would provide a safe, judgment-free space to use the toilet, as cisgender workers and members have access to.

**Transgender:** Often shortened to *trans*, term for people whose gender is different to the gender assignment that was made at birth. This includes trans men, trans women and non-binary people. It is an umbrella term to describe anyone who is not cisgender.

**Non-binary:** Term for people whose gender is outside the gender binary. This can include people who are neither male nor female, somewhere in between, both or otherwise. It is an umbrella term covering many different identities.

**Intersex:** Term for people whose physical sex is not definitively male or female. Intersex people are assigned a legal gender of either male or female at birth, and some people are surgically operated on without their consent as infants or young children. Some intersex people grow up to be transgender, and do not identify as the gender they were assigned at birth. Some intersex people identify as intersex and/or non-binary instead of male or female.

**Cisgender:** Term for when one's gender identity matches the gender assignment given at birth. This is used to describe anyone who is not transgender.

- 4.2** Unnecessary gendering of facilities can be harmful to non-binary, trans and intersex people – the more gender-neutral facilities; the more accessible these facilities are to people in employment.
- 4.3** Gender neutral toilets and facilities would specifically benefit non-binary and gender diverse individuals. Often non-binary individuals, when accessing healthcare, education, etc, are left to float mysteriously between gendered areas - consider GUM clinics, or even gender segregated schools. This is often the case for toilets wherever they go, with non-binary people essentially having to misgender themselves in order to access any kind of facilities, or use an accessible bathroom.

- 4.4** There are many intersecting marginalised groups which also benefit from inclusive policies on toilets, as well as the provision of gender neutral toilets. Disabled workers and service users will be more readily able to use accessible bathrooms due to a decreasing number of able-bodied people using accessible bathrooms to avoid gendered ones. Non-heterosexual people generally may also feel uncomfortable using gendered toilets for fear of harassment, and may need or feel safer accessing gender-neutral facilities. Gender non-conforming women benefit from inclusive policies on access to bathrooms and having workers trained on how to challenge transphobia/homophobia from service users.
- 4.5** There has consistently been a lack of evidence presented to justify treating trans identity and trans individuals as safeguarding risks, especially when it comes to children and young people. In regions where trans communities have made significant gains in terms of rights and recognition - in particular, the Republic of Ireland, Malta, Finland, etc - rates of reported sexual assaults in bathrooms or any kind of harassment/intimidation have not increased. If anything, trans individuals are more likely than the wider population to experience this kind of sexual harassment and assault.
- 4.6** Binary trans people (trans men and trans women) have been using gendered facilities and spaces for years, decades, without issues and without encroaching on the rights of others. Trans men are men and trans women are women - they should be and are able to access gendered spaces, as is their right under sex discrimination legislation.
- 4.7** Providing gender neutral facilities does not negate the need for gendered 'safe spaces' - women experience a significant amount of misogyny, condescension and harassment in the workplace, and safe gendered spaces are absolutely necessary for organising and accessing support. Trans women have been accessing and positively contributing to these spaces, again, for years, decades, centuries even.
- 4.8** There is no way to specifically exclude trans women from gendered spaces without also disproportionately targeting other marginalised women in the process. Any requests for ID or Gender Recognition Certificates would disproportionately harm working class and migrant women, and denoting access on the basis of "whether someone has had 'the surgery'" or not is 1) impossible to police; 2) significantly harms trans people in the North, given our Gender Affirming Services for accessing trans healthcare are currently in crisis and 3) outwith the Gender Recognition Act.
- 4.9** Providing services, spaces, and facilities on the basis of self identification is best practice and ensures the inclusion and wellbeing of all women's groups. Any safeguarding issues should be dealt with on a case-by-case basis, following the organisation's own safeguarding procedures - however, trans women are not a safeguarding concern in and of itself, and endorsing a 'blanket ban' or even policing access would be unlawful and discriminatory. Ensuring that trans people of all gender are included in the union movement and in their workplace is essential for their health and wellbeing, and any measures put in place to do so will not encroach upon the rights of others.
- 4.10** In a scenario where some employers/individuals oppose such a change, it should be explained that trans people have a right to use the facilities and are no more a threat than other users. In the particular case of trans women and trans-feminine people, they may face more violence and aggression in using binary toilets compared to the use of gender-neutral toilets (due to gender policing on the basis of their appearance). If gender-neutral toilets are provided on top of binary toilets, it is also important that trans men and women are not rejected from binary toilets and forced to use gender-neutral facilities; they have the right to use any facility which represents their own gender identity.
- 4.11** There are further accessibility advantages to providing gender-neutral changing areas. A report by Sarah Gibson (former Cambridge University Students' Union (CUSU) LGBT+ President, 2015-2016) into Transgender and Intersex Sports Provision highlights the issues at hand:

*"Trans and intersex people frequently display concern over exposing their body in public. This may be because the characteristics of their body do not match with those of their preferred*

*gender or because their body does not match either binary gender. There is significant fear that they will face discrimination and possibly physical assault if this is seen by those around them. This is particularly relevant to those who are assigned male at birth using a designate female changing room, as those around them may view them as potential aggressors.*

*In the 2013 CUSU LGBT+ survey, Trans\* Inclusion in Sport, it was found that 80% of respondents would happily use gender-neutral single stalls most or all of the time, but only 45% of respondents would be happy using gender-neutral communal changing facilities. This suggests that providing gender-neutral single stalls and private showers would be sufficient to meet the needs of all."*

**4.12** In schools and colleges in Northern Ireland, the provision of gender neutral facilities would create a more inclusive and welcoming space for teachers, support staff and students themselves. There has been an increase in the number of students feeling comfortable enough to come out in their educational environment, often without the support of their school or parents. NIPSA recognises the guidance produced by the Education Authority and the reasonable, affirming approach to supporting trans students and pupils, and agrees that the provision of gender neutral toilets extended to all staff would further this aim.

**4.13** In the Northern Ireland Civil Service Trans Equality Policy and Transitioning at Work Guide, sections 17.4 and 17.5 it states:

*"17.4 To meet the needs of all staff management may consider if all facilities have to be gender specific, as it may be possible, with the support and agreement of the local management and premises team, that some facilities are allocated as 'gender neutral', 'toilets for everyone', or 'accessible to all'. However, whether this is possible or not, trans people should be able to use the facilities allocated to their affirmed gender.*

*17.5 Some posts may also require the use of showers/changing facilities and the legal position regarding changing facilities is as that for toilet facilities."*

## **5. Gender Neutral Toilets: Guidance on Best Practice**

**5.1** The use of toilets and changing facilities often generates strongly held views on the inclusion of trans people. Addressing these concerns requires employers to be sensitive to the needs of trans people as well as the needs of other staff.

**5.2** Where non-binary, trans and intersex people feel more comfortable using a separate toilet or changing facilities (i.e. a gender neutral facility) they should be facilitated to do so. If these are accessible facilities, staff should ensure that access for people with disabilities is not adversely affected.

**5.3** It is good practice to rename gender neutral facilities using inclusive terms. A toilet symbol can be used for all-gender or gender inclusive bathrooms in addition to an active wheelchair symbol for accessible toilets. This symbol is preferable to the "half man, half woman" symbol which some non-binary, trans and intersex people find offensive or inappropriate. Access to appropriate sanitary facilities should also be provided.

**5.4** Where requested, employers should give a non-binary, trans and intersex person access to toilets which match their gender identity.

**5.5** However, decisions regarding toilets changing can be sensitive issues and should be based on the full range of contextual information available, including proper consideration of the law and the Equality Commission's guidance on providing services to trans people which states the following:

*"If there exist ways [service users] can change or use the facility with a fair degree of privacy (e.g. if there are separate cubicles for each individual), then one might doubt whether any purported objections are reasonable, or whether any purported embarrassment is serious".*

The guidance further states:

*"If other service-users object to sharing facilities with transsexual persons, one should not*

*accept those objections at face value. [Service providers] should try to assess if they are reasonable or serious or genuine non-prejudicial reasons through discussion.... an objection that is based on prejudice...is not a reasonable objection”.*

## **6. Conclusion**

- 6.1** Unions are in an important position of protecting the most vulnerable workers from discrimination, institutional abuse and harmful working conditions. For this reason, the General Council believes that we must take a strong stance in favour of trans-inclusive policies on accessing toilets and other facilities in the workplace, in line with the Sex Discrimination (Gender Reassignment) Regulations 1999 as amended which allows trans people to access toilets on the basis of self-identification.
- 6.2** Adopting this policy and fighting for the introduction of gender neutral toilet facilities would ensure that NIPSA sends a message to non-binary, trans and intersex union members and workers that they support them and are willing to stand up for their rights.
- 6.3** Future building works that may involve toilets or changing facilities should include gender-neutral accessible cubicles, and efforts to implement the inclusion of the provision of gender-neutral facilities in existing sites should be supported.
- 6.4** The General Council believes the rebranding of toilets to make them gender-neutral would be a small, but deeply significant step, towards making the workplace a truly inclusive environment.
- 6.5** Conference is therefore asked to give effect to the above determination by accepting the following motion:

**“Conference endorses the content of Conference Paper No.1 and calls upon the General Council to campaign for the introduction of gender neutral toilet facilities in workplaces.”**



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