

Date: 30/04/2024
Your Ref:
Our Ref: 8616

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Dear

FREEDOM OF INFORMATION – TRANSGENDER INCLUSION

I write in response to your request for information in relation to transgender inclusion within NHS Lothian.

Question:

1. Any policy or guidance document that has been approved by NHS Lothian forums or committees that relates to transgender inclusion in shared spaces, including staff changing rooms.

Answer:

Copy of the guidance that was approved at the Lothian Partnership Forum on 5 February 2024 is attached.

Question:

2. Any impact assessment that has been done on any policy or guidance document that relates to transgender inclusion in shared spaces, including staff changing rooms.

Answer:

No impact assessment was completed for this guidance. As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise that we do not hold this information.

The content of this guidance is taken from existing published guidance, in particular, the EHRC statutory code of practice. Therefore, since the content does not include any new or revised policy or practice an equality impact assessment was not carried out.

Question:

3. Any correspondence detailing who should take part in this impact assessment.

Answer:

Not applicable – see above response.

Question:

4. If an impact assessment was not undertaken, any correspondence detailing the reasons for this.

Answer:

See above the reason why an impact assessment was not carried out on this guidance.

I hope the information provided helps with your request.

If you are unhappy with our response to your request, you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner within 6 months of receipt of our review response. You can do this by using the Scottish Information Commissioner's Office online appeals service at www.itspublicknowledge.info/Appeal. If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

If you require a review of our decision to be carried out, please write to the FOI Reviewer at the email address at the head of this letter. The review will be undertaken by a Reviewer who was not involved in the original decision-making process.

FOI responses (subject to redaction of personal information) may appear on NHS Lothian's Freedom of Information website at: <https://org.nhsllothian.scot/FOI/Pages/default.aspx>

Yours sincerely

ALISON MACDONALD
Executive Director, Nursing, Midwifery and AHPs
Cc: Chief Executive
Enc.



Supporting trans staff and gender inclusive workplaces NHS Lothian guidance

1. Introduction

People who feel supported at work, and by their line-manager have a better sense of wellbeing in the workplace and do their jobs better. All NHS Lothian staff are entitled to work in, and be part of, an inclusive and positive workplace culture and environment.

Gender inclusive workplaces are places where all staff behave in a way that does not discriminate against a particular sex, social gender or gender identity and do not perpetuate gender stereotypes.

All NHS Lothian staff must treat everyone in a dignified, non-discriminatory way in the workplace. Every line manager has a responsibility to promote equal opportunities and proactively take steps to prevent discrimination and harassment. As an employer, NHS Lothian has responsibility for embedding equality and non-discrimination in the organisation and establishing and supporting an inclusive workplace culture.

Meeting these responsibilities is central to putting into practice [NHS Lothian's shared values](#) of care and compassion; dignity and respect; quality; teamwork and openness, honesty, and responsibility. These values all play an important part in providing safe effective person-centred healthcare and improving health.

2. Purpose

This guidance provides line managers with information to help them support and meet the needs of trans staff and create gender inclusive workplaces for everyone. It includes information about how to support someone who is transitioning, including using single or separate sex facilities and aims to help increase understanding, reduce prejudice and support positive and professional relationships.

The information is taken from the [Equality and Human Rights Commission Employment](#) and the [Services and Public Functions statutory codes of practice](#) and the [Gender Recognition Act 2004](#).

3. Legal responsibilities

Everyone who works for NHS Lothian must not discriminate or harass someone in relation to a characteristic that is protected by the Equality Act 2010. The Equality Act 2010 prohibits discrimination and harassment on grounds of sex and gender reassignment.

The Equality Act 2010 also places an equality duty on NHS Lothian, and everyone working for NHS Lothian, to consider how they can positively contribute to the advancement of equality and good relations in their work.

4. Terminology – what do our words mean?

In the Equality Act 2010, sex means any man or woman of any age. In relation to a group of people it means either men and/ or boys or women and/or girls.

In the Equality Act 2010, people who have the characteristic of gender reassignment are proposing to undergo, are undergoing or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex.

The Equality Act 2010 describes people who have the protected characteristic of gender reassignment as transsexual people. Now this term is considered outdated, and it is more appropriate to use the term 'trans.'

Trans people have a gender identity that is different from the sex they were assigned at birth. A trans person may identify as a man, woman, transman, transwoman or non-binary person.

We use non-binary in the same way as the Scottish Government to define someone who identifies as having a gender which is in-between or beyond the two categories man and woman, as fluctuating between man and woman or as having no gender, either permanently or some of the time. Many non-binary people consider themselves to be part of the wider trans community. However, not all non-binary people consider themselves to be trans. Therefore, we talk about trans and non-binary people.

Gender reassignment is a personal process, when someone is moving away from their birth sex to the gender they identify with, rather than a medical process. It may include going through medical gender reassignment treatments such as hormone therapy and surgery, but not all trans people want or are able to have these. Each person's transition will involve different things and might involve telling family and friends, dressing differently, and changing their name, pronouns and official documents.

There is no requirement for trans people to tell their employer about their gender reassignment status. For example, we may not know someone's trans history if they have been living for some time in the gender they identify with. However, if someone is proposing to undergo gender reassignment or is in the process of transitioning, they may want to discuss this with their line manager so they can be supported through the process.

5. Gender recognition certificate

The Gender Recognition Act 2004 provides trans people with legal recognition of the gender they identify with. In practical terms, legal recognition is provided by issuing a Gender Recognition Certificate (GRC) and this allows people to get a new birth certificate reflecting their new gender.

The Gender Recognition Act 2004 provides that when someone has a GRC, they must be treated according to the gender they identify with. However, trans people do not need to have a GRC, and should not routinely be asked to produce it as evidence of their legal gender. To do so will compromise a trans person's right to

privacy. If there is a requirement to see proof of someone's legal gender, for example as part of recruitment, then their birth certificate is sufficient confirmation.

6. Understanding needs

When someone decides to share with their line manager that they are transitioning or information about their gender identity, it is good practice to speak sensitively to them about their needs to understand if there are any reasonable and practical steps that can be taken to help them. This can be an extremely difficult step for someone to take and they are likely to be worried about possible responses. Managers should reassure all staff that they will be supported.

Everyone involved in these conversations must maintain confidentiality, except where agreement has been given beforehand. For example, a line manager may ask for guidance and support from HR but must not disclose the person's identity unless permission to do so has been given by them.

Decisions about telling colleagues and other people at work about someone transitioning or other information about someone's gender identity must be led by the trans or non-binary person.

7. Confidentiality

No one should disclose information about someone's gender reassignment without their explicit written consent. Such a disclosure may be a criminal offence.

8. Absence from work because of gender reassignment

Staff who are transitioning may need to be absent from work. They can be given [special leave](#) for specialist medical appointments related to gender reassignment. For other absence, the [NHS Scotland Attendance Policy](#) must be followed. A helpful principle is that staff who are transitioning must not be treated less favourably than they would be if they were absent for other health reasons.

9. Name change

If someone changes their name and pronouns as part of their transition, their line manager will need to amend eESS records and these changes will transfer to the payroll department where amendments to SSTS and pension records will be made. They will need to update their own details on TURAS and LearnPro and other relevant systems, and they may also need a new ID badge, log-in details and email address.

There is no legal requirement to amend records that predate someone's transition. However, it is good practice to think about any documentation that is publicly available and agree how to manage any name change that might alert people to someone's trans history.

10. Toilets and changing facilities

The Equality Act 2010 allows facilities for staff to be provided separately, or differently, for men and women, such as toilets or changing facilities. This means that when NHS Lothian provides separate male and female toilet or changing facilities, we are allowed, for example, to tell men they cannot use female toilets or changing facilities.

If there are single or separate sex toilet or changing facilities for women and men, NHS Lothian staff should treat trans and non-binary people according to their gender identity. If we refuse to allow a trans person to use the toilet or changing facilities that they feel comfortable using, this could be unlawful discrimination on grounds of gender reassignment.

There are limited circumstances when NHS Lothian may be allowed to provide a different service or exclude a trans person from a single or separate sex toilet or changing facility. These circumstances are set out in law in one of the exceptions in the Equality Act 2010. If a manager thinks the exception may apply, they must be guided by the basic presumption that discrimination is unlawful unless the rules for the exception have been met. There must be a very good, evidence-based reason for excluding a trans person, and in each situation, the reason must not be based on prejudice, and all possible less discriminatory steps must have been considered.

These kinds of decisions must be made on a case-by-case basis and line managers must balance the needs of the trans person to use this facility, against the needs of other members of staff and whether they will experience any disadvantage if the trans person is allowed to use the facilities. To do this will often require careful and sensitive discussions with all the staff affected (maintaining confidentiality for the trans person). Care should be taken in each case to avoid a decision based on ignorance or prejudice.

11. Further advice

[HR Online](#)

Human Resources Enquiries HR.Enquiries@nhslothian.scot.nhs.uk or call 0131 536 1130.

Equality and Human Rights Team

loth.equalityandhumanrights@nhslothian.scot.nhs.uk

NHS Lothian Healthy Respect [Top Tips for Trans Inclusion](#)