

Dear

FREEDOM OF INFORMATION – GENDER REASSIGNMENT GUIDANCE

I write in response to your request for information in relation to gender reassignment guidance in NHS Lothian.

Question:

1. Could you provide the specific rationale or research that led NHS Lothian to adopt broader definitions of gender identity and gender reassignment in its policy compared to those outlined in the EHRC Code of Practice?

Answer:

NHS Lothian uses the definition of the protected characteristic of gender reassignment found in The Equality Act 2010. The EHRC guidance about gender reassignment discrimination refers to people with this protected characteristic as 'trans people' or 'trans'.

Question:

2. Could you provide any correspondence (email or teams) where the decision to deviate from statutory definitions and terms in the Equality Act 2010 is discussed.

Answer:

There is no correspondence where this has been discussed.

Question:

3. Was any legal advice sought in the formulation of this NHS Lothian guidance document? Could details of this advice, particularly concerning the deviations from statutory definitions and terms in the Equality Act 2010 (of which the EHRC code of practice is based), be disclosed?

Answer:

No legal advice was sought.

Question:

4. As you have previously stated that no impact assessment was undertaken due to "The content of this guidance is taken from existing published guidance, in particular, the EHRC

statutory code of practice”, what other guidance (if any) was used to formulate this document?

Answer:

In addition to the EHRC statutory code of practice, the Equality Act 2010, Gender Recognition Act 2004 and information from the guidance sections of the EHRC website were used. The Scottish Government Non-Binary Equality Action Plan definition of non-binary was used to explain what is meant by this term.

Question:

5. Given that the NHS Lothian guidance document is in fact, not entirely based on existing guidance, policies, or practice, please provide any details of any upcoming impact assessment on this guidance that will now have to be undertaken.

Answer:

There are no plans to carry out an equality impact assessment on this guidance as the guidance does not constitute a ‘new or revised policy or practice’ as defined in the Equality Act 2010.

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 reviewer at the address at the top 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.nhslothian.scot/FOI>

Yours sincerely

ALISON MACDONALD
Executive Director of Nursing Midwifery and AHPs
Cc: Chief Executive