

Date: 16/05/2025
Our Ref: 9860
Enquiries to loth.freedomofinformation@nhs.scot

Dear

FREEDOM OF INFORMATION – TRANSGENDER STAFF

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

Question:

1. The number of complaints made by staff in the last six years relating to Transphobia or Transphobic behaviour. Please provide a breakdown by year (2020, 2021, 2022, 2023, 2024 and 2025 so far). Please also provide how many complaints were upheld and how many were dismissed. Please also reveal how many resulted in a staff member being suspended or disciplined.

Answer:

This information is not collected centrally. This is because 'transphobia' is not a category used for reporting on staff complaints. Information will be held in individual complaint records, but in order to provide the information you request it would be necessary to review each complaint record over the period you have specified, requiring significant resources. Under section 12 of the Freedom of Information (Scotland) Act 2002, NHS Lothian is not required to respond to your request if the resources required to do so equate to more than £600 in cost.

Question:

2. A copy of the health board's policy or view of the use of single sex spaces and in relation to staff members who identify as Trans who work under the health board.

Answer:

NHS Lothian's position and guidance for line managers on single sex spaces is attached.

Question:

3. The number of complaints that have been made by female staff in the last six years (breakdown by year 2020, 2021, 2022, 2023, 2024 and 2025 so far) that related to single sex spaces such as changing room facilities. Please also provide how many complaints were upheld and how many were dismissed. Please also reveal how many resulted in a staff member being suspended or disciplined.

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Question:

4. A copy of any correspondence (email, email inbox or letter) from senior health board members that relates to or mentions the well known NHS Fife employment tribunal that's currently going on.

Answer:

The attached correspondence is between the Board Chair, Non Executive members of the Board and the Director of Human Resources and Organisational Development.

Sensitive information about members of staff, and names and contact details of non senior members of staff have been redacted from the correspondence as this information could lead to the identification of the individuals mentioned. Since we do not have their consent to release their personal data, the information is exempt under section 38 of the Freedom of Information (Scotland) Act 2002 as to provide it would breach the principles of the Data Protection Act 2018.

Question:

5. A copy of any emails from the health board's press and communication team that relates to or mentions the well known NHS fife employment tribunal.

Answer:

There has been no correspondence from NHS Lothian's Communication Team relating to or mentioning the NHS Fife employment tribunal case.

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 <https://www.foi.scot/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.nhsllothian.scot/FOI>

Yours sincerely

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

From: [REDACTED]
To: [Connaghan, John](#)
Subject: RE: NHS Fife employment tribunal and relevance to NHSL
Date: 20 February 2025 13:03:08

John,

A complex issue but I think it is reasonable for a non-executive to seek assurance that the Board's policies and guidance are compliant with all relevant legislation. In this case, that would include the Equality Act but also other legislation relating to staff, such as the Workplace (Health, Safety and Welfare) Regulations 1992.

A short letter, recently sent to the Cabinet Secretary may be useful to consider:

[FWSMBMSM-to-Neil-Gray-18Feb25.pdf](#). This letter claims that:



"NHS Scotland's draft Workforce gender transitioning guide fails to mention that employers are required by law to provide separate toilets, washing facilities and changing areas for men and women under Workplace (Health, Safety and Welfare) Regulations 1992. The guide, which is currently out for consultation and due for release this year, instead says that staff who identify as transgender must be allowed to use their "preferred facilities" unless there is a particular "case-by-case" reason why they should not. This guidance encourages NHS Boards to flout the workplace regulations and ignore their legal obligations. It puts their employees at risk of unlawful harassment and discrimination, and boards at risk of substantial legal and reputational costs, as we are now seeing."

And states:

"The Scottish Government needs to urgently consider the legality of this guidance. No exception to the workplace regulations is provided by the Equality Act 2010. The question of what the protected characteristic of sex in that act means is currently under consideration by the UK Supreme Court. It has however been settled law for three years that in the absence of a gender-recognition certificate an individual's sex takes its natural common-law meaning."

If this position turns out to be correct and given that NHS Lothian's extant guidance appears to be based on or closely aligned to the NHS Scotland position, it may be appropriate to have clarification of the Board's obligations earlier rather than later.

Best,

[REDACTED]
[REDACTED]
Board Secretary, NHS Lothian
Mainpoint, 102 West Port, Edinburgh, EH3 9DN
 [REDACTED]
 [REDACTED] [@nhslothian.scot.nhs.uk](mailto:[REDACTED]@nhslothian.scot.nhs.uk)

From: Connaghan, John

Sent: 20 February 2025 11:46

To: Thompson, Darren

Subject: FW: NHS Fife employment tribunal and relevance to NHSL

PROFESSOR JOHN CONNAGHAN CBE

Chairman

NHS Lothian

Waverley Gate

2-4 Waterloo Place
Edinburgh
EH1 3EG
Tel: 0131 465 5804
Mob: [REDACTED]

From: Butler, Janis <Janis.Butler@nhs.scot>
Sent: 19 February 2025 16:57
To: Connaghan, John <john.connaghan@nhs.scot>
Cc: Hiscox, Caroline <caroline.hiscox@nhs.scot>
Subject: RE: NHS Fife employment tribunal and relevance to NHSL

Hi John

I just wanted to let you know that I have received your email. I am content that we are currently acting within the terms of the Equalities Act 2010 and the advice of the Equality and Human Rights Commission. Our guidance was drafted by Laura and signed off by the Lothian Partnership Forum in 2024.

It is really important that through ignorance or prejudice we do not unlawfully discriminate against trans staff, the basis of our guidance is managing such situations on a case-by-case basis and being person centred.

[REDACTED]
[REDACTED]
[REDACTED]

An NHS Scotland Transitioning Guide has been developed (very much mirrors what our guidance says) and was due to be launched later this month but due to the ongoing high profile case it has been delayed. Not because the guidance is incorrect, but it would have no doubt added to current media maelstrom.

Important that we do not jump to conclusions ahead of any tribunal ruling, especially as we don't really know the facts.

I have a call with Val tomorrow morning and will come back to you after that to advise on response to Katharina.

I hope that's helpful.

Thanks

Janis

From: Connaghan, John <john.connaghan@nhs.scot>
Sent: 19 February 2025 09:44
To: Butler, Janis <Janis.Butler@nhs.scot>
Subject: Fw: NHS Fife employment tribunal and relevance to NHSL

Janis

See e mail trail below for information and advice.

Can I ask what the position is with SG and rest of Scotland. Are we operating to national policy or is everything left local?

John

Sent from [Outlook for Android](#)

From: Kasper, Katharina <Katharina.Kasper@nhs.scot>
Sent: Tuesday, February 18, 2025 10:31:48 AM
To: Connaghan, John <john.connaghan@nhs.scot>; de Souza, Val

<val.desouza@nhs.scot>

Subject: Re: NHS Fife employment tribunal and relevance to NHSL

Hi John,

Thank you. I am of course not suggesting that NHSL would knowingly choose not to comply with the law. There have been some recent cases in the Scottish courts which have clarified the interpretation of the EA 2010 in respect to the protected characteristics of sex and gender re-assignment.

We are unlikely to have a tribunal judgment until the end of the year, so I would very much like to get assurance on the legality of NHSL position before that.

Naturally very happy to discuss this with Val.

Thanks

Katharina

Sent from [Outlook for iOS](#)

From: Connaghan, John <john.connaghan@nhs.scot>

Sent: Monday, February 17, 2025 3:06 pm

To: Kasper, Katharina <Katharina.Kasper@nhs.scot>; de Souza, Val <val.desouza@nhs.scot>

Subject: Re: NHS Fife employment tribunal and relevance to NHSL

Katharina

My understanding is that our policy complies with the equality act 2010. However if our interpretation is incorrect then we need that examined ASAP.

Ordinarily my instincts would be to wait until we have the tribunal finding. If this is not for some time then the HR policy group and staff governance would at their discretion look again at the legal framework for our policy in the interim. The judgement on this is for Val and Janis to jointly consider if this needs reappraisal with input from staff side nxd.

Val

Can you speak to Janis re queries from Katherina and advise?

John

Sent from [Outlook for Android](#)

From: Kasper, Katharina <Katharina.Kasper@nhs.scot>

Sent: Monday, February 17, 2025 1:18:23 PM

To: Connaghan, John <john.connaghan@nhs.scot>; de Souza, Val <val.desouza@nhs.scot>

Subject: NHS Fife employment tribunal and relevance to NHSL

Hi John, Val

I hope you are both well.

I am writing to pick up on the brief conversations which I had with you separately before and after the Board meeting last week.

This is in relation to the employment tribunal which took place over the last two weeks in Dundee, where Sandie Peggie, a nurse, is alleging sexual harassment, indirect discrimination and victimisation

by NHS Fife, as the Board allowed a male doctor who identifies as transgender to use the female changing rooms. When Ms Peggie challenged the doctor, because she was uncomfortable changing in the presence of a male, the doctor complained and Ms Peggie was subject to a disciplinary process. There is also an element of whistleblowing discrimination in this case as well, so this gives me an additional locus.

I have been following the case through the newspaper coverage, as well as through a resource called Tribunal Tweets, which basically provide a real time transcript of the court proceedings (they have been given permission by the court to do so).

<https://tribunaltweets.substack.com/p/peggie-vs-fife-health-board-and-dr>

When we spoke on the 5th February, the tribunal had only started, and I was trying to understand whether there were any implications from this for NHS Lothian, and since then my concerns have grown.

There are several elements to this case:

1. The legality of the NHS Fife policy which stated that people who identify as transgender (i.e. they believe they are of a different 'gender' than their sex, and have the protected characteristic of 'gender reassignment') are allowed to use the single sex facilities of the opposite sex. So in this case a male using the female changing rooms. This is a matter that is relevant to NHS Lothian.
2. The way NHS Fife dealt with the complaint about Ms Peggie, after she confronted the transgender doctor. This seems to be a case specific HR matter, and is not relevant to NHS Lothian.

Having listened to the evidence given by the doctor, I also think there is a third element which may be of relevance to NHS Lothian:

3. Where a patient requests care from a clinician of a particular sex, - i.e. a female patient wants to be treated by a female doctor. What is the position of the Board, with regards to clinicians who are male, but identify as female - is there a clear policy which is available for this situation, i.e. would the Board comply with the patient's wishes and preclude transgender (male to female) clinicians from treating the female patient?

I briefly raised the first point with Janis at the Board as well - I asked her about NHS Lothian policy on changing facilities, and her response was that we do have a policy which is similar to NHS Fife.

<https://org.nhsllothian.scot/foi/wp-content/uploads/sites/22/2024/05/8616.pdf>

What has emerged since then - covered in newspaper articles over the weekend, that the questions of legality of NHS Fife's position - and by extension of NHS Lothian's position, with regards to the provision of single sex facilities have been raised with the Cabinet Secretary in the summer of 2024.

<https://www.heraldscotland.com/news/24937927.sandie-peggie-tribunal-gray-told-nhs-fife-acted-illegally>

<https://www.scotsman.com/news/politics/neil-gray-was-warned-nhs-fife-had-acted-illegally-in-trans-doctor-case-4993062>

Legal experts, including the council for MS Peggie, assert that NHS Fife was failing to comply with its legal obligations under the Workplace Regulations 1992 to provide suitable workplace single-sex toilets and changing facilities for its staff. They also allege non-compliance with the Equality Act 2010, as well as a failure comply with legal obligations under the Human Rights Act 1998.

The Scottish Government's response to the concerns raised was that the matter of compliance is up the the NHS Scotland Boards as employers.

The NHS Fife Board is receiving heavy criticism just now, for not submitting the policy at the core of this employment case to more scrutiny. It seems that NHS Fife position was based solely on the advice from an equality and diversity officer, rather than a lawyer.

Having followed this case, I believe we should be asking the executives more questions about the NSH Lothian policy position on single-sex changing facilities provision as a minimum.

I am in particular concerned that the NHS Lothian policy advocates 'case-by-case' decisions - which as we have seen in NHS Fife do not generally go well, as we as a Board have no oversight over them.

I know that the temptation may well be to wait until the NHS Fife employment tribunal is concluded and there is a judgement, however, I don't think this is a tenable position for us to take, because:

- a. The tribunal has been extended into July, and the verdict is unlikely to be before the end of the year. If our policy is indeed unlawful, we have an obligation to reverse it as quickly as possible.
- b. It is possible that the tribunal does not cover the lawfulness of the policy in its ruling, instead focusing on the handling of the complaint.
- c. There is now significant media and political interest in this this case, and several politicians have indicated that they will raise questions in parliament over the Board's handling of this case. Janis indicated to me that NHSL has indeed employees who have the protected characteristic of gender reassignment, so we need to understand the risk that a similar problem may occur in HNSL.

I suggest the following scrutiny needs to be applied to ensure that the Board is compliant with all relevant legal obligations, and we are managing the risk. At a minimum we should see:

- Detailed briefing on the current policy - how it was developed and who approved it.
- Equality impact assessment of the policy - i.e. how does the policy balance the rights of all employees, and what impact it may have on people with other protected characteristics - e.g. women with a set of religious beliefs
- Whether NHS Lothian sought any guidance on this from Scottish Government and what that guidance was
- A legal opinion on the lawfulness of the policy - in particular on the compliance with the Workplace Regulations 1992; the Equality Act 2010, and the Human Rights Act 1998.

As one of the arguments is that the policy breaches the Human Rights Act 1998 not to expose female staff to violations of their article 3 and 8 rights to privacy and dignity and not to be exposed to indecent exposure or voyeurism, I believe we need to get a view from the Scottish Human Rights Commission on what NHS Lothian's obligation as a public body is in this space. It is their responsibly to provide advice in this space and so far they have not contributed to the debate.

I believe we should review the concern 1. through the Staff Governance Committee.

I also believe we should review the concern 3. through the Healthcare Governance Committee. I appreciate that this is a sensitive area, as it involves patients' rights and rights of staff with the protected characteristic of 'gender re-assignment' but it is critical to our function as a Board to have clarity on this. There may already be a policy in place to cover this scenario and I might not be aware of it.

Naturally I am very happy to discuss.

Kind regards

Katharina

Sent from [Outlook for iOS](#)

Mr Harry Caldwell
dirtyharryznz@gmail.com

Date: 16/05/2025
Our Ref: 9860
Enquiries to loth.freedomofinformation@nhs.scot

Dear Mr Caldwell

FREEDOM OF INFORMATION – TRANSGENDER STAFF

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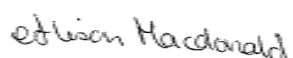
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Yours sincerely

A handwritten signature in dark ink that reads 'alison Macdonald'.

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