

Date 17/06/2025
Your Ref
Our Ref 10127

Enquiries to Richard Mutch
Extension 35687
Direct Line 0131 465 5687
loth.freedomofinformation@nhs.scot
richard.mutch@nhs.scot

Dear

FREEDOM OF INFORMATION – SUPREME COURT RULING

I write in response to your request for information in relation to the Supreme Courts Ruling and biological sex.

Question:

- All correspondence - including text messages and emails - between the Scottish Government (specifically Cabinet Secretary for Health Neil Gray) and your health board since April 15, 2025 regarding the UK Supreme Court ruling (that “sex”, “man” and “woman” in the Equality Act refers to biological sex) and the use of single-sex spaces within NHS healthcare services.

Answer:

Please see enclosed. NHS Lothian has a policy of not releasing the names and details of staff below a senior level and those of non-NHS Lothian staff, this information is considered exempt under Section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 – personal information.

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.

Headquarters
Mainpoint
102 West Port
Edinburgh EH3 9DN

Chair Professor John Connaghan CBE
Chief Executive Professor Caroline Hiscox
Lothian NHS Board is the common name of Lothian Health Board



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
Cc: Chief Executive

From: [REDACTED] on behalf of HealthSponsorship@gov.scot

To:

[REDACTED]
Caroline;

[REDACTED] [Hiscox](#)

Cc: HealthSponsorship@gov.scot;

Subject: Note from Permanent Secretary - UK Supreme Court Ruling

Date: 30 May 2025 15:34:09

Attachments: [image001.png](#)

Dear all,

Please find below a note from the Permanent Secretary in relation to the UK Supreme Court's recent announcement.

'The Scottish Government has today published a note for public bodies regarding the UK Supreme Court ruling on the meaning of sex in the Equality Act 2010 on the Scottish Government's website: www.gov.scot/publications/uk-supreme-court-ruling-on-meaning-of-sex-in-equality-act-update

This provides an update on the steps the Scottish Government is taking following the judgment. Given the significance of the ruling and the impact across public services, I would be grateful if you could ensure this note is distributed throughout your networks to all relevant stakeholders, including agencies and partner organisations.

Our aim is to ensure all relevant stakeholders are aware of the Scottish Government's position, allowing organisations to position themselves in a space of preparedness and readiness for the publication of the Equality and Human Rights Commission's (EHRC) updated code of practice.

Please note that the EHRC consultation on updating their Code of Practice was published on 20 May and will run for 6 weeks until 30 June 2025. The Scottish Government encourages organisations to fully engage with the consultation. Further advice on how the Scottish Government will develop our response to the consultation will follow shortly.

I appreciate your support in ensuring the effective communication of this information across the public sector.

Best wishes,

Joe Griffin
Permanent Secretary'

Kind regards,

[REDACTED]

[REDACTED] | Sponsorship Support Manager | Health Sponsorship
| Directorate for Chief Operating Officer, NHS Scotland



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[REDACTED]

[REDACTED]

From: [REDACTED] <[\[REDACTED\]@gov.scot](mailto:[REDACTED]@gov.scot)>

Sent: 09 May 2025 07:39

To: [REDACTED]
[REDACTED]

Subject: Re: EHRC / Supreme court

Hi [REDACTED]

We've checked in with SG, and the position you set out in your email is correct, we are awaiting the guidance and code of practice before any guidance is issued.

In terms of communications from SG to Boards, Ms Somerville, the Minister leading on this, will likely issue a letter to all public bodies, possibly next week. It's like that then Caroline Lamb would then issue a letter to Boards following that. However, these are clearly not going to have a lot of detail.

The position you set out in terms of the need to consider issues that arise based on the SC judgement and interim guidance is aligned, and the suggestion for boards to

start to proactively prepare is also echoed by the FM and Cab Sec HSC, so we'd support this through boards starting to audit their spaces and understand the opportunities and challenges that this presents, whilst not pre-empting guidance / policy and this is likely to be in the letters issued.

I also discussed with HRD secretariat last night, and have copied Tom Power, who is the secretary. Boards are already starting to look at audits, and have also been discussing the issue of communications and how to ensure managers know where to go for support and advice, as there are a few issues being raised now. We are keen to ensure that we can keep connected and share good practice and discuss approaches, informally in this interim period before formal policy and guidance, and I think we'd be keen to ensure CLO is part of this, using my role as CPO to ensure good communication into and out of the policy teams both in Health Workforce and wider SG.

In terms of CLO providing an update to boards as set out below, SG wouldn't have any view on this / want to approve it, given the role of CLO to provide legal advice to boards, but I think it's probably a good idea to do so as part of your normal business with boards, and they certainly don't disagree with anything in the context.

Hope this is helpful, and happy to follow up as needed and keen to see how we all stay connected over the coming weeks and months on this important topic.

Kind regards

[REDACTED]

[REDACTED]

*Chief People Officer, NHS Scotland
Health Workforce Directorate
Scottish Government*

Email: [REDACTED]@gov.scot

From: [REDACTED]

Sent: Thursday, May 8, 2025 9:11 am

To: [REDACTED]

Subject: RE: EHRC / Supreme court

Thanks [REDACTED]

I've got another meeting at 930, and speaking to HRDs at 3-4, the one yesterday was a wider DG HSC and so was quite high level.

I think we would be aligned in our approach as you set it out and the idea of the audit meets ministers asks that we prepare. I'm thinking it may be easiest initially to work directly with HRDs and yourselves on this, rather than try to navigate formal comms and all that entails. I've asked [REDACTED] for a view on that, as [REDACTED]
[REDACTED]

As part of that, I was going to suggest that we set up a small working group, with SG policy, CLO, HRD input and myself that we could use to bring questions / scenarios to discuss and share, in this period where we don't have the formal guidance. Do you think that would be helpful?

Kind regards
[REDACTED]

[REDACTED]
Chief People Officer, NHS Scotland
Directorate of Health Workforce
Scottish Government

Email: [REDACTED]

From: [REDACTED]
Sent: 08 May 2025 08:46
To: [REDACTED]
Subject: RE: EHRC / Supreme court
Importance: High

Morning,

I wondered if there was any output from your meeting yesterday? We are having a team meeting today and the topic will come up. It would be really useful to know that it would be consistent with the SG view for CLO simply to say that the Interim Guidance from EHRC should be followed with an audit of facilities as a first step.

I do however appreciate that you will be rushed off your feet!

From: [REDACTED]
Sent: 07 May 2025 12:17
To: [REDACTED]
Subject: RE: EHRC / Supreme court

Hi – I presumed that you would be rushed off your feet! I will wait to hear from you.
[REDACTED]

From: [REDACTED] [gov.scot](mailto:[REDACTED]@gov.scot)>
Sent: 07 May 2025 12:15
To: [REDACTED]

Subject: RE: EHRC / Supreme court

Thanks [REDACTED] sorry, I did have that marked to come back to, but it's been a frantic few days and I've lost the plot

Let me come back to you on this, as we are having a conversation at 1pm, and I can feed that in!

[REDACTED]

[REDACTED]
Chief People Officer, NHS Scotland
Directorate of Health Workforce
Scottish Government

Email: [REDACTED]@gov.scot

From: [REDACTED]
Sent: 07 May 2025 12:12
To: [REDACTED]
Subject: RE: EHRC / Supreme court

Hi [REDACTED],
Thanks for your email - I wonder if it has crossed with mine – see attached?
Happy to have a chat about this, as it is clearly going to be important to have a joined up approach to this.

[REDACTED]

[REDACTED]
Head of Employment

CentralLegalOffice
Gyle Square, 1 South Gyle Crescent, Edinburgh. EH12 9EB

NHS National Services Scotland

[REDACTED]

 [Legal | National Services Scotland](#)

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NHS National Services Scotland is the common name for the Common Services Agency for the
Scottish Health Service. www.nhsnss.org

From: [REDACTED] [gov.scot](mailto:[REDACTED]@gov.scot)>

Sent: 07 May 2025 12:07

To: [REDACTED]

Subject: EHRC / Supreme court

Hi [REDACTED]

We're having various discussions (as you can imagine) about how we can try and prepare for impending guidance from the EHRC and what boards might need to do in the interim, which is strongly being driven by wider SG officials.

Someone mentioned that CLO were thinking some interim comms on this might be helpful, subject to SG approval, and I just wondered if that is the case, what you were thinking might be helpful and where it's up to. I think from a Health perspective, there is a plan to do a letter at some point, but again, that's a discussion with wider SG policy colleagues, so we are just trying to piece everything together and coordinate things.

We're also looking at what boards and SG might need to do in the background to get ahead when we do get the guidance, and I'm speaking to HRD secretariat tomorrow, with a view to being able to write out to HRDs to get a sense of what various boards are doing or planning in the background, so we understand this, and can also share this more widely if there's some good practice or ideas out there?

Anywhere, hope that's helpful, just keen to keep connected on where everyone is at, which isn't the easiest

Kind regards

[REDACTED]
Chief People Officer, NHS Scotland
Directorate of Health Workforce
Scottish Government

[REDACTED]

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From: [REDACTED] PublicBodiesUnitMailbox@gov.scot
Cc: PublicBodiesUnitMailbox@gov.scot
Subject: UK Supreme Court ruling on the meaning of sex in the Equality Act 2010
Date: 03 June 2025 14:52:07

Dear Chief Executives,

The Scottish Government has recently published a note for public bodies regarding the UK Supreme Court ruling on the meaning of sex in the Equality Act 2010 on the Scottish Government's website: www.gov.scot/publications/uk-supreme-court-ruling-on-meaning-of-sex-in-equality-act-update

This provides an update on the steps the Scottish Government is taking following the judgment. Given the significance of the ruling and the impact across public services, I would be grateful if you could ensure this note is distributed throughout your public bodies to all relevant colleagues

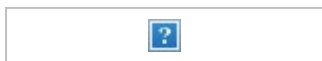
Our aim is to ensure all relevant stakeholders are aware of the Scottish Government's position, allowing organisations to position themselves in a space of preparedness and readiness for the publication of the Equality and Human Rights Commission's (EHRC) updated code of practice.

Please note that the EHRC consultation on updating their Code of Practice was published on 20 May and will run for 6 weeks until 30 June 2025. The Scottish Government encourages organisations to fully engage with the consultation. Further advice on how the Scottish Government will develop our response to the consultation will follow shortly.

We appreciate your support in ensuring the effective communication of this information across the public sector.

Best wishes,

Public Bodies Support Unit



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