

Date 11/07/2025
Your Ref
Our Ref 10258

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

Dear

FREEDOM OF INFORMATION – GENDER IDENTITY

I write in response to your request for information in relation to gender identity.

Question:

- Under the Freedom of Information (Scotland) Act 2002, I am requesting the following information regarding NHS Lothian's response to the UK Supreme Court judgment issued on 16 April 2025, which confirmed that the protected characteristic of "sex" in the Equality Act 2010 refers to biological sex and not gender identity.*

Please confirm:

- Has NHS Lothian reviewed or updated any of the following since the ruling:*
 - Equality, Diversity and Inclusion (EDI) policies*
 - Clinical guidance regarding access to sex-segregated care or facilities*
 - HR documents, staff training materials, or legal compliance resources*
 - Safeguarding or patient intake frameworks involving sex-based rights*

Answer:

a.	No.
b.	No.
c.	Yes
d.	No

Question:

- If updates have been made:*
 - Please provide summaries or copies of the revised documents*
 - Include dates and any legal or procedural rationale used in implementing the changes*

Answer:

a.	A holding statement to replace guidance for line managers was provided and is enclosed below.
b.	22 May 2025 and guidance from the NHS Central Legal Office and Scottish Government.

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*

Question:

3. *If no changes have been made:*

- a. *Does NHS Lothian acknowledge this Supreme Court judgment as binding for legal and policy purposes*
- b. *Are any reviews currently underway, or planned?*

Answer:

a.	The Supreme Court judgment provides clarity on the definition of sex for purposes of complying with the provisions in the Equality Act 2010.
b.	NHS Lothian is undertaking an audit of workplace toilet, shower and changing facilities. All relevant workplace and services policies, practices and guidance will be reviewed once the EHRC has published the revised code of practice.

Question:

4. *Has NHS Lothian issued any briefings, memos, or staff instructions regarding the legal distinction between sex and gender identity for equality, privacy, or patient care purposes?*

Answer:

NHS Lothian training resources already distinguish between the protected characteristic of sex and gender reassignment, and the difference between sex, gender and gender identity.

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
Cc: Chief Executive
Enc.

Access to Single Sex Spaces

Following the Supreme Court judgment in relation to the definition of sex in the Equality Act 2010, the Equality and Human Rights Commission (EHRC) has confirmed that it will update its Code of Practice about single and separate sex facilities and services by the summer.

NHS Lothian will review this guidance and communicate this to staff as soon as the situation is clearer. However, whilst the specific guidance on how we meet the needs of all our staff may need to change from that outlined to date, our organisational values, and our expectations that colleagues will treat each other and service users in line with them, hold fast. Above all, it is essential everyone is treated with dignity and respect.

In the meantime, as managers, you may be asked to clarify how the Supreme Court judgment affects people in your teams. Whilst there is a lot of commentary at present about what this judgement means, please do not make assumptions about how related matters should be handled. If this situation arises, please highlight this to your own manager and contact Ruth Kelly, Deputy Director of People & Culture or Laura Hutchison, Head of Equality & Human Rights, for guidance.

Please see [this article](#) from our Chief Executive, Caroline Hiscox, for further clarity on our expectations regarding the importance of diversity and inclusion in NHS Lothian and our shared responsibility for addressing attitudes and behaviours that are contrary to these values.