

Date 11/12/2025  
Your Ref  
Our Ref 10834R

Enquiries to Richard Mutch  
Extension 35687  
Direct Line 0131 465 5687  
[loth.freedomofinformation@nhs.scot](mailto:loth.freedomofinformation@nhs.scot)  
[richard.mutch@nhs.scot](mailto:richard.mutch@nhs.scot)

Dear

## FREEDOM OF INFORMATION REVIEW – PROTECTED CHARACTERISTICS

I write in response to your request for review of NHS Lothian's response to your Freedom of Information request about protected characteristics. Having discussed your request and our response of 11 November, I can respond as follows:

### Review Request:

- My thanks for providing a response to my Freedom of Information request of 13<sup>th</sup> October and relating to fostering good relations between people with the protected characteristic of 'gender reassignment' and people who share the protected characteristic of 'sex' and who are women.

I am unhappy with the Board's response for a number of reasons and would invite the Board to review the response and attempt to actually answer the questions put.

I am sorry you do not think that our response answered your questions adequately. We have provided a response below to explain why we do not agree.

In the Board's response to the first question, the Board said:

Three of the strategic priorities demonstrate how NHS Lothian is giving due regard to the need to foster good relations between people who share the protected characteristic of gender reassignment and those who do not are .....

This is quite simply wrong. I asked for:

some or all of the distinct actions and steps aimed at 'fostering good relations' between the two cohorts [defined in the preceding paragraph as being between people with the protected characteristic of 'gender reassignment' and people who share the protected characteristic of 'sex' and who are women].

This renders the Board response as both wrong and irrelevant, and attempting to substitute strategic priorities for 'distinct actions and steps'. Given this is fundamental to the issues on which information has been asked, I would invite the Board to learn from the mistakes and review and revise the answers to provide distinct actions and steps aimed at 'fostering good

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*

relations' between the two cohorts [defined as being between people with the protected characteristic of 'gender reassignment' and people who share the protected characteristic of 'sex' and who are women], both pre- and post-Supreme Court judgement.

In response to your request for "some or all of the distinct actions and steps aimed at fostering good relations" between people who share the protected characteristic of sex and those who don't

In addition, I had asked for information on:

could you also please let me know what benchmarking, data gathering and other systemic changes were put in place to track the actual impact of 'fostering good relations' actions between the two cohorts and what measurable outcomes these showed or produced, pre-Supreme Court judgement ?

The Board's answer was:

In January 2025, NHS Lothian started the first annual equality and human rights staff survey. This survey aims to identify staff views about the extent to which NHS Lothian is making progress towards achieving the equality and human rights strategic priorities and staff experiences of discrimination, harassment, bullying and behaviour that is described as microaggressions

This is a broad brushstroke answer to a very specific question and will not necessarily provide relevant and/or accurate data on relations between the two cohorts the subject of my original request. It is also only a partial answer as it deals with staff views. The views and experiences of both cohorts as service users appear to have been overlooked/ignored by the Board. In the overall review of the Board's response I would invite the Board to set out answers which include answers containing data relevant to service users from the two cohorts.

Overall, the Board's response falls considerably short of what was in fact asked and does beg the question of whether those responsible for compiling the response actually understood what was being asked for or indeed understood the contest of the request.

As I have said, I would invite the Board to learn from the mistakes and review and revise the answers to provide distinct actions and steps aimed at 'fostering good relations' between the two cohorts [defined as being between people with the protected characteristic of 'gender reassignment' and people who share the protected characteristic of 'sex' and who are women], both pre- and post-Supreme Court judgement, as well as setting out what benchmarking, data gathering and other systemic changes were put in place to track the actual impact of 'fostering good relations' actions between the two cohorts and what measurable outcomes these showed or produced [pre- and post-Supreme Court judgement].

#### Review Response:

We have reviewed your comments and remain confident that our response addresses the questions you asked, and does so within the scope of the FOI legislation. However, we thought it would be helpful to provide you with more information to explain our response so you are clear where to find the information you requested.

We appreciate that your questions asked specifically about the actions NHS Lothian has taken, and is taking, to foster good relations between trans people and women. Our response directs you to the information that you have requested. For example, for actions prior to the Supreme Court judgment about the definition of sex in the Equality Act 2010, there is information in NHS Lothian Equality & Human Rights Annual Report 2023-2024 about:

- Targeted and generic internal communications to encourage staff to update their equality monitoring information. This includes information about trans and female staff. Having this information allows us to continue to do work to improve the diversity of our workforce. This action aims to increase integration of people with different protected characteristics, including women and trans people.
- The workshops that took place at the in-person Equality and Diversity Conference included a workshop about the importance of LGBT+ allyship. This aimed to increase understanding of, and respect for difference between trans people and non-trans people, including but not limited to women.
- The guidance for managers to support trans staff and create a gender inclusive workplace for everyone. This aims to increase understanding of the needs of trans people and women (and men and non-binary people), increase respect for difference, and reduce bullying and harassment against trans people and women (and men and non-binary people).
- A gender inclusive radiology pilot project in the Western General Hospital. This aimed to increase understanding of the needs of women and trans people (and non-binary people) and respect for difference, and to increase confidence and trust in NHS Lothian.

For example, there is information in the Equality & Human Rights Annual Report 2024-2025 report about:

- The training video for maternity services staff sharing experiences of LGBT+ families. This aims to increase understanding and respect for difference between trans people and non-trans people, including but not limited to women, and to increase confidence and trust in NHS Lothian.
- In-person education sessions on trans inclusive health care. One of the aims of this session is to provide information and guidance on balancing the rights of women and trans and non-binary people.
- The NHS Scotland Pride Pledge and Badge scheme. This aims to increase understanding and respect for difference and reduce bullying and harassment in relation to gender reassignment (and sexual orientation).
- All day EDI workshops and CPD sessions about microaggressions. One of the aims of each session is to reduce the levels of prejudice between people with different protected

characteristics, including between women and trans people (and people with particular religious or philosophical beliefs).

We think it is important to respond to your view that our response is "quite simply wrong" and "wrong and irrelevant" because we provided additional information that explains the work NHS Lothian is doing to meet the requirements of the duty to have due regard to the need to foster good relations between people who share the protected characteristic of gender reassignment and those who do not.

As you will be aware, NHS Lothian's fostering good relations duty goes beyond having regard for the need to foster good relations between trans people and women. Section 149 (1) (c) of the Equality Act 2010 requires us to, in the exercise of our public functions, have due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The arguments in the public domain about the meaning of gender or sex are not restricted to ideas, attitudes and relationships between trans people and women. Acting as the PSED intended (and set out in the [EHRC Technical Guidance on the Public Sector Equality Duty Scotland](#)), NHS Lothian recognises that there is a need to foster good relations between people in different groups in order to promote respect, equity and trust and embrace diversity in all its forms. Therefore, in our response we were trying to provide assistance by providing information about the range of actions being taken by NHS Lothian to be gender inclusive for everyone who works for us and uses our services at a time when some of the public dialogue on this topic is divisive.

In relation to your request for information about how NHS Lothian is measuring the actual impact of our fostering good relations activity, we disagree that we have failed to provide the information requested. The fostering good relations duty is defined in s.149(5) as involving having regard to the need to tackle prejudice and promote understanding. The meaning of these terms is also included in the EHRC Technical Guidance. Our response provides information about how we are trying to measure the actual impact of the actions we are taking within our public functions to tackle the prejudice held and experienced by staff, and to increase their knowledge of the real nature and circumstances of people who share a particular protected characteristic. The staff survey includes information about the protected characteristics of those completing the survey and so allows for an analysis of responses by protected group. Therefore, it includes trans people and women.

However, it is, for the reasons set out above, not limited to trans people and women. At this point, we do not measure the actual impact of our work on tackling the prejudice held and experienced by people who use our services or on promoting their understanding of the real nature and circumstances of people who share a particular protected characteristic. As explained in our response we are in the process of developing realistic, useful and proportionate key performance indicators and an evidence base to measure the actual impact of our work. Our response also provided information in response to your request for information about what measurable outcomes are planned.



You are of course entitled to disagree with NHS Lothian's approach to meeting our public sector equality duties, and we do value and take into account constructive engagement and feedback. However, we ask that future correspondence remains respectful.

We hope this helps to clarify our response.

If you are not satisfied with this response you still have the right to make a formal complaint to the Scottish Information Commissioner who you can contact at the address below or 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.

Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS  
Telephone: 01334 464610  
Fax: 01334 464611  
e-mail: [enquiries@foi.scot](mailto:enquiries@foi.scot)

Yours sincerely

**Freedom of Information Reviewer/  
NHS Lothian**  
cc: Executive Nurse Director