Lothian NHS Board

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NHS Lothian

Date 27/02/2026
Your Ref
Our Ref 11085 - 11095

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 Court Ruling.

Question: 11085

- In terms of the Freedom of Information [Scotland] Act 2002, I write to ask for sight of all Board papers, emails and internal correspondence setting how NHS Lothian has responded to Ms Russell's letter of 30th September 2025, what legal advice the Board has taken, what actions the Board has planned to ensure compliance with the law, and what conclusions were reached on entering the risks around this issue and why it was not entered in the Corporate Risk Register.

Answer:

- A verbal update was provided at Staff Governance Committee on 15 December 2025. The draft minute is not yet approved and is due for publication within 12 weeks. NHS Lothian is relying on the exemption under s.27(1).
- 01/10/2025 email from Executive Director of People and Culture sharing copy of Letter from Director of Health Workforce to NHS Chief Executives – implementation of the Supreme Court Judgement – 30 Sept 2025
- NHS Lothian is relying on the exemptions in Section 36 and Section 30(b) of the Freedom of Informaiton (Scotland) Act 2002 for the request for emails and internal correspondence about legal advice and planned actions to comply with the law that relate how NHS Lothian has responded to Ms Russell's letter.

It may be of assistance to refer to:

- The following published FOI response Microsoft Word - 10258-Gender Identity - FOI July 2025 - 10258 (002) which sets out actions that have already been taken and are ongoing.
- Although not a Board paper, email or internal correspondence, the attached Project Initiation Document for the Workplace Facilities Short Life Working Group sets out the agreed planned actions that are relevant to Ms Russell's letter.

NHS Lothian

No Board papers, emails or internal correspondence are held in relation to entering risks on the Corporate Risk Register around Ms Russell's letter.

It may be of assistance to refer to NHS Lothian's Risk Management Policy and Risk Management Operational Procedure and explain that existing controls are in place to reduce the risk to a level that does not warrant escalation onto the corporate risk register. Both documents are publicly available on our website following this link Risk Management – Policy Online.

Question: 11095

1. Has the Board obtained their own legal advice on complying with the judgement and with all relevant legislation and regulations, all as set out in Ms Russell's letter of 30th September 2025?
2. If the answer to this is yes, can you please provide me with:
    a. A copy of the legal advice obtained by the Board
    b. The total cost to the Board of obtaining that advice
    c. A copy of any planned actions, including timetables, the Board has drawn up based on the advice received and ensuring that the Board will be compliant, as an employer and as a service provider, with the judgement and with all relevant legislation and regulations
    d. A note of the total costs anticipated to the Board of changes needed to policy and practice to ensure compliance with the judgement and with all relevant legislation and regulations
3. If the answer is no, can you provide me with a copy of the Board meeting minutes at which the Chief Executive reported receipt of Ms Russell's letter and an explanation as to why the Board has not sought the legal advice recommended by government?
4. In either scenario, has the Board flagged the reputational, financial and other risks associated with non-compliance with the judgement and with all relevant legislation and regulations, in the Board's Corporate Risk Register ?
5. If yes, can you please provide me with a copy of the Corporate Risk Register entry
6. If no, can you please provide me with a copy of papers, emails and any relevant correspondence associated with a decision not to include the matter in the Board's Corporate Risk Register.
7. Copies of any progress reports on all of the above made to Ms Russell providing the 'assurances on your work in this area' as flagged in her letter of 30th September 2025

Answer:

1.	Yes
2a.	NHS Lothian is relying on the exemption under s.36 of the Freedom of Information

NHS Lothian

	(Scotland) Act 2002.
2b.	£1,331.82.
2c.	Actions being taken forward under the oversight of NHS Lothian Workplace Facilities Short Life Working Group are included within the attached Project Initiation Document.
2d.	This information is not held.
3.	Not applicable.
4.	No.
5.	Not applicable.
6.	This information is not held. It may be of assistance to refer to NHS Lothian's Risk Management Policy and Risk Management Operational Procedure and explain that existing controls are in place to reduce the risk to a level that does not warrant escalation onto the corporate risk register. Both documents are publicly available on our website following this link Risk Management – Policy Online
7.	This information is not held.
In relation to 2d. and 7. As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise that we do not hold this 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.

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FOI responses (subject to redaction of personal information) may appear on NHS Lothian's Freedom of Information website at: https://org.nhslothian.scot/FOI/Pages/default.aspx

Yours sincerely

ALISON MACDONALD
Executive Director, Nursing
Cc: Chief Executive

V1 Agreed SWLG 15 Dec 2025

Project initiation document

Project name	Executive project lead
Provision of separate sex and universal workplace facilities project	Director of People and Culture

Project definition
Background:
In April 2025 the Supreme Court issued a judgment clarifying that the protected characteristic of sex in the Equality Act 2010 is defined as biological sex / sex at birth. The judgment has created legal uncertainty about the workplace toilet, changing and shower facilities that staff who are trans (who share the protected characteristic of gender reassignment) should use. NHS Lothian has legal obligations to provide suitable facilities for all staff free from discrimination and harassment, and to protect enjoyment of their human rights.
Purpose:
This project aims to protect the privacy and dignity of all staff, meet health and safety requirements, and avoid unlawful discrimination and harassment through a balanced mix of separate-sex, universal, and accessible facilities.
Objectives:
<u>Immediate</u> - Suitable single occupancy universal toilet facilities are available on all sites. - Line managers are supported by the E&HRts and Employee Relations teams to ensure all staff have access to suitable toilet and changing facilities. - Implementation of remedial changes in specific sites for any employee relations (ER) cases is prioritised. - Roll out the workplace facilities audit across all sites. - Confirm local processes for each site to complete audits, review findings and implement necessary changes. <u>Longer term</u> - Clarify system wide process for requesting and implementing agreed changes to facilities (this will include budget, cost centre, prioritisation of works, and using the E&F helpdesk). - Clarify governance arrangements to provide assurance about compliance with relevant legislative requirements.
Scope:

In scope

Implement remedial changes on specific sites where there are ongoing ER cases.

Identify gaps in current provision of workplace facilities on all sites.

Make changes to existing facilities as required to ensure provision of:

- Separate sex facilities for women;
- Separate sex facilities for men;
- Accessible facilities for disabled staff;
- Single occupancy universal facilities.

For toilets, changing rooms, and shower facilities as needed.

All sites owned by NHS Lothian and occupied by NHS Lothian staff, including:

- Royal Infirmary of Edinburgh
- Royal Hospital for Children and Young People
- Western General Hospital
- St John's Hospital
- Royal Edinburgh Hospital
- Astley Ainsley Hospital
- East Lothian Community Hospital
- Edington Cottage Hospital
- Midlothian Community Hospital
- Musselburgh Primary Care Centre
- Spittal Street Centre
- Allermuir Health Centre
- Belhaven Hospital
- Blackburn Partnership Centre
- Calareidh
- Chalmers
- Ellens Glen House
- Ferryfield House Community Hospital
- Findlay House
- Lauriston Building
- Leith Community Treatment Centre
- Liberton Hospital
- Pennywell All Care Centre
- The Princess Alexandra Eye Pavillion
- Sunndach
- Tippethill Hospital

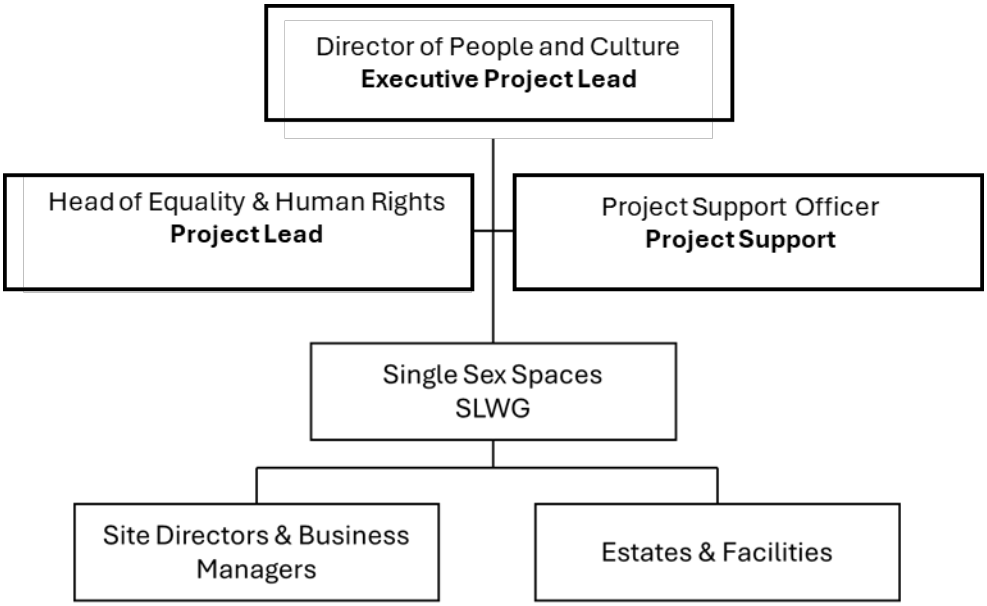
Regular communication with council colleagues for assurance around access to facilities for NHS staff working in council buildings.

Out of scope

Upgrading existing facilities beyond what is required to comply with the new guidance.

Making changes to facilities in council buildings used by NHS staff.

Project governance



Deliverables

To implement changes to facilities on specific sites where there are ongoing ER cases, to appropriately provide facilities for the staff concerned.

To gather data via an audit from every site outlining the provision of facilities for staff.

To provide suitable facilities for every site:

- Separate facilities for women and men
- Single occupancy universal toilet facilities
- Accessible toilet facilities for disabled staff

To provide suitable facilities as needed:

- Changing facilities (a balanced mix of separate sex, single occupancy, and accessible facilities)
- Lockers in a universal space (+/- lockers in separate sex spaces)
- Shower facilities (a balanced mix of separate sex, single occupancy, and accessible facilities)

To establish governance arrangements for each site to provide assurance about compliance with relevant legislative requirements.

To implement a system wide process for requesting and executing agreed changes to facilities (to ensure there are funds in place, a cost code assigned, and an agreed priority with the estates and facilities teams to action the work).

To get ongoing assurance from council colleagues that NHS Lothian staff working in council buildings have access to suitable facilities and agree arrangements for dealing with any enquiries relating to NHS Lothian staff.

Key milestones	
Milestone	Timeframe
Completion of audits	Short term
Provision of suitable single occupancy universal toilet facilities on all sites.	Short term
Support to line managers to ensure all staff have access to suitable toilet and changing facilities	Ongoing
Implementation of system wide process for actioning agreed changes to facilities	Long term
Plans agreed for required changes to facilities on every site to comply with guidance	Long term

Risks	
01	Some sites may not have the space to add additional changing or washing facilities to be able to comply with requirement to provide both separate sex and single occupancy universal facilities.
02	An updated code of practice has not been confirmed since the Supreme Court judgment in April 2025.
03	Changes to the provision of existing facilities and practice about the use of facilities may disclose trans status without consent, may cause stress and anxiety to staff who have experienced gender based violence concerned and if not managed proportionally may result NHS Lothian acting unlawfully under equality and human rights law.

Project timeline			
	Owner	Start date	End date
Project initiation			
Agree project plan	Executive Director of People and Culture	Nov 2025	Dec 2025

Confirm local processes for each site to complete audits and implement necessary changes	Head of Equality & Human Rights, Site Directors/Business Managers	Nov 2025	Dec 2025
Project stage one			
Roll out audit to all sites			
Send audit template to main site	Project Support Manager	Oct 2025	Nov 2025
Audit of facilities of main sites	Estates and Facilities & Site Directors/Business Managers	Oct 2025	Dec 2025
Support to line managers to ensure all staff have access to suitable facilities.	Equality & Human Rights, HR, site directors/ managers & Estates and Facilities	Ongoing	Ongoing
Proposal and sign off of policy and practice about single occupancy toilet facilities including: • Consultation with trade unions and staff equality networks • Equality and Children's Rights Impact Assessment	SLWG	Nov 2025	Feb 2026
Implement any changes to single-occupancy toilet facilities	Site Directors/ Business Managers, Estates and Facilities	Feb 2026	April 2026
Complete audit for each identified site	Site Directors/Business Managers & Estates and Facilities	Oct 2025	Mar 2026
Project stage two			
Proposal, sign off and implementation of system wide process for requesting and implementing agreed changes to facilities	SLWG & Estates and Facilities	Nov 2025	April 2026
Capital funding arrangements	SLWG	Jan 2026	Sept 2026
Implement governance arrangements to provide assurance about compliance	Site Directors/Business Managers	Dec 2025	April 2026
Project closure			
All sites in process of updating workplace facilities provision	Site Directors/Business Managers	Jan 2026	Sept 2026
Project review			

Lessons learned review	Equality & Human Rights Team	Dec 2026	Jan 2027