

Date 07/04/2026  
Your Ref  
Our Ref 11256

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Dear

## FREEDOM OF INFORMATION – SUPREME COURT RULING

I write in response to your request for information in relation to the Supreme Court ruling.

### Question:

- The amount spent on legal advice regarding the Supreme Court ruling on For Women Scotland v The Scottish Ministers, who provided this advice and any action taken as a result.

### Answer:

NHS Lothian has spent £2,195.32 on legal advice regarding the Supreme Court ruling on For Women Scotland v The Scottish Ministers. This advice was provided by the NHS Scotland Central Legal Office (CLO). Information about who provided this advice is not provided because it is personal data that is exempt from disclosure under Section 38(1)(b) of FOI(S)A. Information held about action taken as a result of this advice is included in the attached Project Initiation Document (PID).

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](http://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  
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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  
Enc.

**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:
<p>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.</p>
Purpose:
<p>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.</p>
Objectives:
<p><u>Immediate</u></p> <ul style="list-style-type: none"> <li>- Suitable single occupancy universal toilet facilities are available on all sites.</li> <li>- Line managers are supported by the E&amp;HRts and Employee Relations teams to ensure all staff have access to suitable toilet and changing facilities.</li> <li>- Implementation of remedial changes in specific sites for any employee relations (ER) cases is prioritised.</li> <li>- Roll out the workplace facilities audit across all sites.</li> <li>- Confirm local processes for each site to complete audits, review findings and implement necessary changes.</li> </ul> <p><u>Longer term</u></p> <ul style="list-style-type: none"> <li>- 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&amp;F helpdesk).</li> </ul>

- 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
- Sundach
- Tippethill Hospital

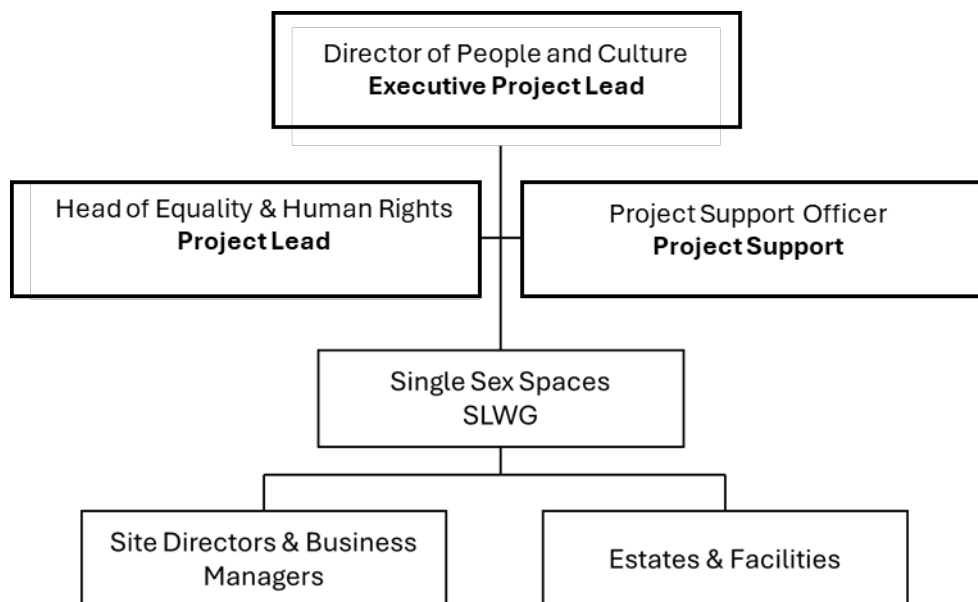
Regular communication with council colleagues for assurance around access to facilities for NHS staff working in council buildings.

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
<p>To implement changes to facilities on specific sites where there are ongoing ER cases, to appropriately provide facilities for the staff concerned.</p> <p>To gather data via an audit from every site outlining the provision of facilities for staff.</p> <p>To provide suitable facilities for every site:</p> <ul style="list-style-type: none"> <li>- Separate facilities for women and men</li> <li>- Single occupancy universal toilet facilities</li> <li>- Accessible toilet facilities for disabled staff</li> </ul> <p>To provide suitable facilities as needed:</p> <ul style="list-style-type: none"> <li>- Changing facilities (a balanced mix of separate sex, single occupancy, and accessible facilities)</li> <li>- Lockers in a universal space (+/- lockers in separate sex spaces)</li> <li>- Shower facilities (a balanced mix of separate sex, single occupancy, and accessible facilities)</li> </ul> <p>To establish governance arrangements for each site to provide assurance about compliance with relevant legislative requirements.</p> <p>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).</p> <p>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.</p>

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
<b>Project initiation</b>			
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
<b>Project stage one</b>			
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: <ul style="list-style-type: none"> <li>• Consultation with trade unions and staff equality networks</li> <li>• Equality and Children's Rights Impact Assessment</li> </ul>	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
<b>Project stage two</b>			
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
<b>Project closure</b>			
All sites in process of updating workplace facilities provision	Site Directors/Business Managers	Jan 2026	Sept 2026
<b>Project review</b>			
Lessons learned review	Equality & Human Rights Team	Dec 2026	Jan 2027