Lothian NHS Board

NHS Lothian Headquarters
Waverley Court
4 East Market Street
Edinburgh
EH8 8BG
www.nhslothian.scot

Date 10 July 2026
Your Ref
Our Ref 11578

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

Dear

FREEDOM OF INFORMATION – SEPARATE SEX WORKPLACE FACILITIES

I write in response to your request for information in relation to separate sex workplace facilities.

Question:

- Could you please provide me with a copy of all documents, since April 1st 2024, circulated to or produced by members of the corporate management team related to the issue of separate sex workplace facilities.

Answer:

Please see enclosed documents and minutes. We have provided information directly related to you request (redacting information which is not relevant).

We have also removed the names and details of staff below a senior level as NHS Lothian considers this exempt under Section 38(1)(b) – 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.

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
Enc.

DRAFT

NHS LOTHIAN

CORPORATE MANAGEMENT TEAM

Minutes of the Corporate Management Team Meeting held at 8.30am on Tuesday 06 May 2025 in Meeting Room 10 West Port and on MS Teams.

Present: Caroline Hiscox (Chair), Jim Crombie, Alison Macdonald, Craig Marriott (from 8:40am - until 11am), Colin Briggs, Michelle Carr, Morag Campbell (until 11am), Judith Mackay, TracyAnne Miller, Christine Laverty, Jenny Long, Tom Power, Alison White (from 8:40am), Fiona Wilson (until 11am), Scott Garden and Heather Cameron.

In Attendance: Grace Cowan (for Morag Barrow); Ashley Goodfellow (for Dona Milne); Eddie Doyle (for Tracey Gillies, until 10:30am); John Sturgeon (for Martin Egan); Mike Massaro-Mallinson, EHSCP Service Director, Operations (Items 5&6); Billie Flynn, Deputy Chief Nurse, EHSCP (Items 5&6); Andy Hall, Service Director – Strategic Planning Edinburgh HSCP (Items 5&6); Mike Reid, General Manager, REAS (Item 7); Mairi Simpson, Head of Workforce Development, Public Health (Item 8); Claire Ross, Chief AHP, Midlothian HSCP (Item 8); Fiona Ireland, Nurse Director, Corporate Nursing (Item 12); Ruth Kelly, Deputy Director of People & Culture (Items 12, 13 & 15); [redacted], Equality, Diversity, Inclusion and Human Rights Lead (Item 15); Darren Thompson and [redacted] (Minute).

Apologies for absence were received from Tracey Gillies, Dona Milne, Tracey McKigen and Morag Barrow.

INTRODUCTION

The Chief Executive welcomed colleagues to the meeting.

1. Minutes of Previous Meeting – 22 April 2025

1.1 The minutes of the previous meeting held on 22 April 2025 were approved as a correct record.

2. Matters Arising & Action Note

The circulated Action Note was noted and updates were made to the actions marked as 'subject to delay.'

2.1 [redacted]

CM/MCam

2.2 [redacted]

MCam

DISCUSSION ITEMS

3. Chief Executive Update

3.1 CMT noted the future National Meeting Dates:

- 6th May: Board Chief Executive's Extraordinary Meeting re: Business Services OBC
- 13th/14th May: Board Chief Executives
- 29th May: NHS National Executive Leads Group

4. Proposals for CMT Performance Reporting

4.1 [redacted]

4.2 [redacted]

4.3 [redacted]

CGT

5. [redacted]

5.1 [redacted]

5.2 [redacted]

5.3 [redacted]

5.4 [redacted]

6. [redacted]

6.1 [redacted]

6.2 [redacted]

6.3 [redacted]

6.4 [redacted]

7. [redacted]

7.1 [redacted]

7.2 [redacted]

7.3 [redacted]

7.4 [redacted]

7.5 [redacted]

7.6 [redacted]

7.7 [redacted]

8. [redacted]

8.1 [redacted]

9. [redacted]

9.1 [redacted]

10. [redacted]

10.1 [redacted]

10.2 [redacted]

10.3 [redacted]

11. [redacted]

11.1 [redacted]

12. [redacted]

12.1 [redacted]

[redacted].

13. [redacted]

13.1 [redacted]

14. [redacted]

14.1 [redacted]

15. Provision of Single Sex Services and Facilities

15.1 CMT noted the current position in relation to the Supreme Court judgment, the Equality and Human Rights Commission's (EHRC) interim update on the practical implications of the UK Supreme Court and the assessment set out in the paper and agreed the response as outlined in the paper, until such time as the EHRC updated Code of Practice was available.

15.2 CMT noted there would also be supportive communications issued along with communications for managers and that further information sessions for CMT and the Board were being considered.

16. [redacted]

16.1 [redacted]

ITEMS FOR APPROVAL OR NOTING (CONSENT AGENDA)

[redacted]

19. Date of Next Meeting

Tuesday 20 May 2025, 8.30am.

NHS LOTHIAN

STAFF GOVERNANCE COMMITTEE - DRAFT

Minutes of the meeting of the Staff Governance Committee held at 9.30am on Monday 15 December 2025 via Microsoft Teams.

Present: Ms V. de Souza, Non-Executive Board Member (Chair); **Ms E. Gordon** (Non-Executive Board Member); **Mr J. Innes** (Non-Executive Board Member); **Ms K. Kasper** (Non-Executive Board Member) and **Ms T. Miller** (Employee Director).

In Attendance: Miss T. Gillies (Executive Medical Director), **Ms M. Campbell** (Director of Facilities); **Mr T. Power** (Director of People and Culture, Human Resources); **Ms A. MacDonald** (Executive Nurse Director, Nursing); **Mrs R. Kelly** (Deputy HR Director); **Ms A. Langsley** (Associate Director of OD & Learning); **Ms L. Cunningham** (Partnership Representative); **Dr H. Monaghan** (Speak Up Champion) **Ms R. Weerakoon** (Speak Up Ambassador); **Ms K. Morris** (Specialist Education Lead, Staff Engagement and Experience); **Ms S. Preston** (Interim Head of Employee Relations); **Mr D. Thompson** (Board Secretary); **Dr S. Robinson (**Deputy Director of Medical Education); **Mr D. Collins** (Head of Health & Safety) and [redacted] (Corporate Governance Team -Minute).

Apologies for absence was received from: Ms C. Hiscox (Chief Executive) and **Ms T. McKigen** (Director of Primary Care)

Observing [redacted]

CHAIR'S WELCOME AND INTRODUCTIONS

Members were reminded that they should declare any financial or non-financial interests they had in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

36 Declaration of Conflicts of Interest

36.1 None

37 [redacted]

37.1 [redacted]

37.2 [redacted]

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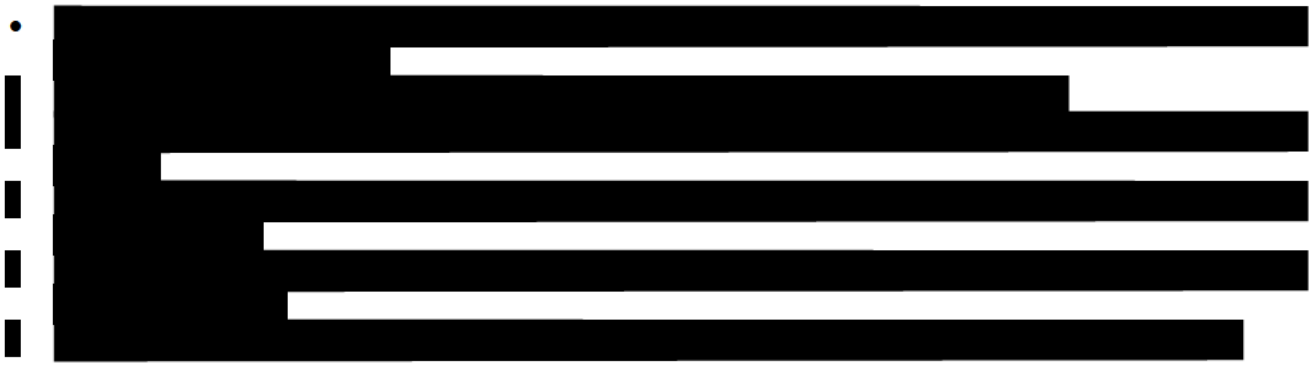

39.1.2

39.1.3

39.1.4

40

41

41.1

41.1.1

41.1.2

41.1.3

41.1.4

41.1.5 [redacted]

41.1.6 [redacted]ecutive Board Member asked about GDPR and whether correct procedures were followed. **TP**

41.1.7 [redacted]

41.1.8 [redacted]

42 [redacted]

42.1 [redacted] **TP**

42.2 [redacted]

43 [redacted]

43.1 [redacted]

43.2 [redacted]

43.3 [redacted]

43.4 [redacted]

43.5 [redacted]

43.6 [redacted]

43.7 [redacted]

43.8 [redacted]

43.9 [redacted]

43.10 [redacted]

TP / HM.

43.11 [redacted]

43.12 [redacted]

44 [redacted]

44.1 [redacted]

44.2 [redacted]

44.3 [redacted]

44.4 [redacted]

44.5 [redacted]

44.6 [redacted]

45 [redacted]

45.1 [redacted]

45.1.1 [redacted]

45.1.2 [redacted]

46 [redacted]

46.1 [redacted]

46.2 [redacted]

46.3 [redacted]

46.4 [redacted]

46.5 [redacted]

46.6. [redacted]

46.7 [redacted]

47 [redacted]

47.1 [redacted]

47.2 [redacted]

48 [redacted]

48.1 [redacted]

48.2 [redacted]

48.2.1 [redacted]

48.3. [redacted]

48.3.1 [redacted]

48.3.2 [redacted]

48.3.3 [redacted].

48.3.4 [redacted]

[redacted]

48.3.5 [redacted]

MC

48.3.6 [redacted]

48.4 [redacted]

48.4.1 [redacted]

48.5 [redacted]

48.5.1 [redacted]

48.5.2 [redacted]

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48.5.3 [redacted]

48.5.4 [redacted]

48.6 [redacted]

48.6.1 [redacted]

48.6.2 [redacted]

48.6.3 [redacted]

48.7 [redacted]

48.7.1 [redacted]

48.7.2 [redacted]

48.7.3 [redacted]

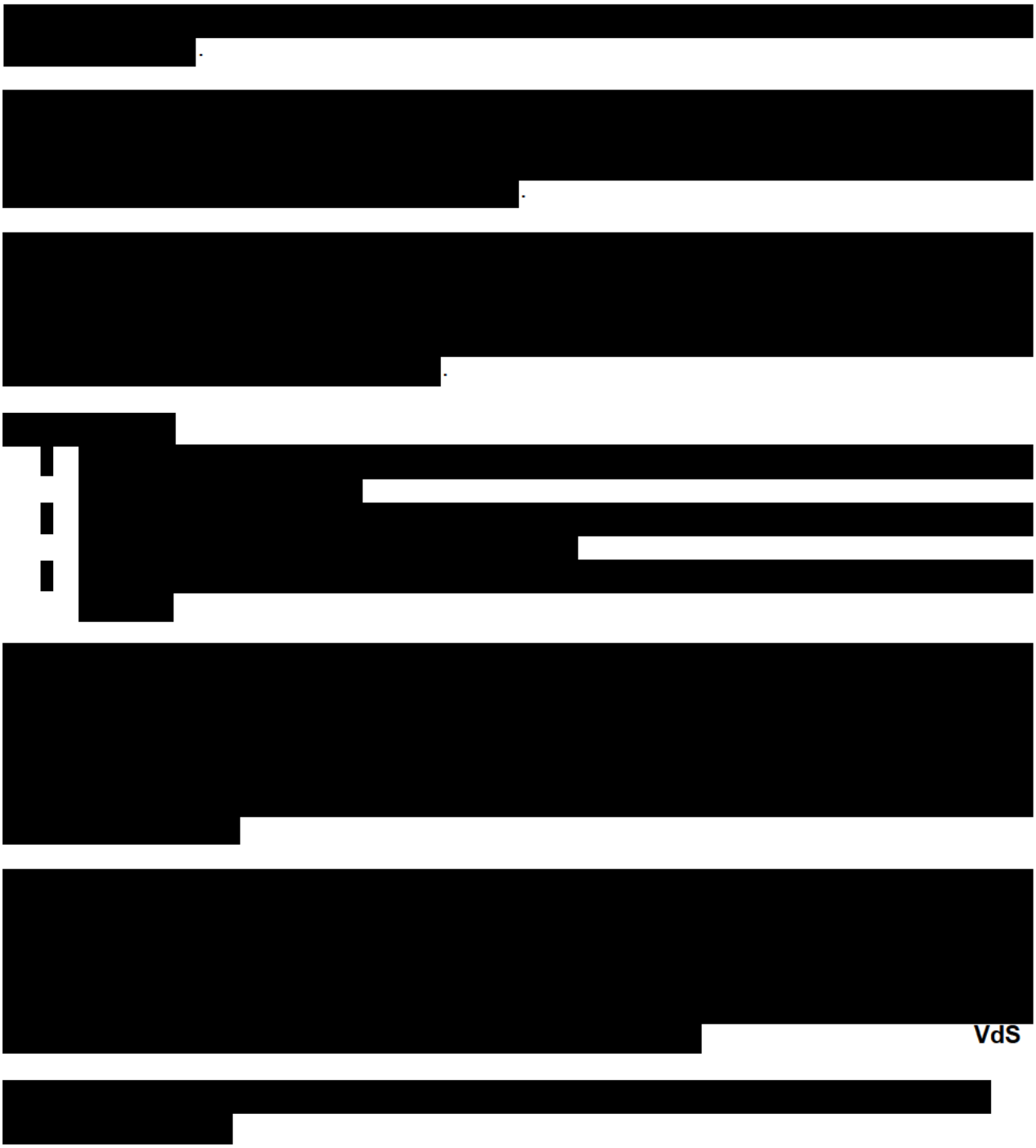
48.8 [redacted]

48.8.1 [redacted]

48.8.2 [redacted]

48.9 [redacted]

48.9.1 [redacted]



48.9.2

48.9.3

48.9.4

48.9.5

48.9.6

48.9.7

VdS

49 Single Sex Spaces- update

49.1 The Director of People & Culture confirmed a working group had met four times to address issues linked to single sex spaces and their provision. An initial audit of main sites had been completed; the outputs would inform provision for toilets, changing facilities and the wider estate. Outputs from the reviews were to be combined in early 2026, with recommendations to be considered by the Corporate Management Team.

49.2 The Director of People & Culture emphasised the need to support trans staff and those undergoing gender reassignment and to ensure appropriate measures were in place. The outcome of the NHS Fife case and the related Leonardo case had provided useful learning. There

had been recent developments in the NHS Fife matter; this did not reduce the likelihood of an appeal, and the nurse involved was expected to appeal. Guidance and advice were to be reissued to staff, and staff had been asked not to draw conclusions from the NHS Fife case while it remained a live legal matter.

50 [redacted]

50.1 [redacted]

51 [redacted]

51.1. [redacted].

51.2 [redacted]

51.3 [redacted]

51.4 [redacted]

51.5 [redacted] **TP/RK**

51.6 [redacted].

52 [redacted]

52.1 [redacted]

52.2 [redacted]

52.3 [redacted]

53 [redacted]

53.1 [redacted]

53.2 [redacted]

54 [redacted]

54.1 [redacted]

54.2 [redacted]

54.3 [redacted]. **JI**

55 Date of Next Meeting

55.1 Date of Next meeting: Wednesday 11 March 2026 at 9.30am

NHS Lothian

Meeting:	**Staff Governance Committee**
Meeting date:	**30 July 2025**
Title:	**Implications of the Supreme Court judgment on meaning of sex in the Equality Act 2010: Update**
Responsible Executive:	**Tom Power (Director of People & Culture)**
Report Author:	**Laura Hutchison (Head of Equality & Human Rights)**

1 Purpose

This report is presented for:

Assurance	☒	Decision	☐
Discussion	☐	Awareness	☒

This report relates to:

Annual Delivery Plan	☐	Local policy	☒
Emerging issue	☒	NHS / IJB Strategy or Direction	☐
Government policy or directive	☐	Performance / service delivery	☒
Legal requirement	☒	Other [please describe]	☐

This report relates to the following LSDF Strategic Pillars and/or Parameters:

Improving Population Health	☐	Scheduled Care	☐
Children & Young People	☐	Finance (revenue or capital)	☐
Mental Health, Illness & Wellbeing	☐	Workforce (supply or wellbeing)	☒
Primary Care	☐	Digital	☐
Unscheduled Care	☐	Environmental Sustainability	☐

This aligns to the following NHSScotland quality ambition(s):

Safe	☒	Effective	☒
Person-Centred	☒		

Any member wishing additional information should contact the Responsible Executive (named above) in advance of the meeting.

2 Report summary

2.1 Situation

On 16 April, the Supreme Court issued its judgment in For Women Scotland v Scottish Ministers. The question for the Supreme Court was to determine the statutory interpretation of the definition of the protected characteristic of sex in the Equality Act 2010 (EA 2010). In particular, whether the EA 2010 treats a trans woman with a Gender Recognition Certificate (GRC) as a woman for all purposes within the scope of the Act, or when the EA 2010 speaks of a woman and sex it is referring to a biological woman and biological sex.

The Supreme Court defined 'biological sex' as sex at birth. When someone's sex at birth is changed on their birth certification because they have obtained a Gender Recognition Certification (GRC), the Supreme Court describes this as 'certificated sex.'

The Supreme Court judgment concluded that the protected characteristic of sex in the EA 2010 means biological sex, biological woman, and biological man. It also concluded that this does not disadvantage trans people, with or without a GRC because trans people are protected from direct discrimination and harassment and indirect discrimination.

The judgment raises questions about how NHS Lothian should treat trans people working for us and using our services, in particular, when attempting to balance the rights of trans people and the rights of women. This is because the judgment affects situations when NHS Lothian is allowed to choose to provide single or separate sex services to overcome or minimise disadvantage connected to sex or to meet the different needs of women and men, and when it is lawful to exclude trans people from separate or single services or provide a different service. It is also highly likely to impact the way in which NHS Lothian complies with the rules about the provision of suitable toilet, changing and washing facilities for staff in the Workplace (Health and Safety and Welfare) Regulations 1992.

2.2 Background

Advice from NHS Scotland Central Legal Office (CLO) to NHS Scotland Human Resource Directors (HRDs) was issued on 15 May covering staffing issues. This clarified that "the hard reality" is that whatever Boards do in response to the Supreme Court judgment there are legal risks, particularly while we wait for statutory guidance.

It advises that:

'If an employer were to immediately change its policies and practices in terms of access to toilets and changing facilities for trans staff without consultation then there is a risk of legal challenge from those affected. If the status quo is maintained, in the short-term, then this could also give rise to legal challenge as being contrary to legal obligations set out by the Supreme Court and reflected in the Equality and Human Rights Commission's (EHRC) interim (non-statutory) position.

The risk of legal challenge will only be one factor in decision-making in this area, given the employee relations and reputational risks at play.'

The CLO advised the following immediate steps:

- Audit current facilities.

- Engage with affected staff, including signposting to support that is available.
- Document matters appropriately.
- Staff guidance, through communication that outlines the current legal position while reiterating protections against discrimination and harassment of staff.
- Plan for implementation of anticipated changes in toilet and changing arrangements to coincide with revised EHRC code of practice and updated guidance.
- Allow for regular review, monitoring for updates from EHRC and Scottish Government.

On 28 May, the Scottish Government provided an update to Scottish public bodies on the steps being taken following the Supreme Court judgment. This includes establishing a short life working group that aims to:

- Ensure there is a consistent approach to the understanding of the ruling,
- Review legislation, guidance and policies within Scottish Government portfolios that the ruling impacts on, and
- Ensure the Scottish Government is ready and prepared once the EHRC's revised code of practice is published.

The Scottish Government update also:

'Strongly encourages bodies to undertake their own review relevant to their organisation and services in order to help inform any necessary practical steps required when the EHRC publish their updated Code of Practice.

It is not appropriate for the Scottish Government to issue specific guidance in advance of the EHRC's publication given [the EHRC] are the regulator and enforcer of the Equality Act 2010. Doing so increases the risk of inconsistency with the updated Code of Practice that is being prepared by the EHRC. The Scottish Government has informed the EHRC of our approach.

Public bodies should satisfy themselves that they are compliant with the law and that they are reviewing all necessary guidance and policies to prepare themselves for the EHRC's updated Code of Practice.

The Scottish Government remains committed to growing strong communities across Scotland, built on a solid foundation where everyone enjoys the realisation of their human rights.

The UK Supreme Court stated clearly that the judgement should not be read as a triumph of one or more groups in our society at the expense of another. The Scottish Government supports this view.

The judgment does not remove protection from trans people, with or without a Gender Recognition Certificate. The judgment makes it clear that trans people continue to be protected from discrimination and harassment based on the protected characteristic of gender reassignment.

Discrimination and harassment against all people with one or more protected characteristic, in breach of the Equality Act 2010, is illegal and entirely unacceptable.'

2.3 Assessment

2.3.1 Quality/ Patient Care

Since the Supreme Court judgment, we:

- Have led efforts to jointly instruct Counsel for legal advice about the practical implications on NHS Scotland Boards as employers and service providers. The first draft of Counsels' opinion was received 4 July and points of clarification are due by 25 July to inform the final opinion.
- Are providing advice and support to service leads in relation to specific services. There have been three service-related enquiries since the judgment. Confidential written advice has been provided by the Head of Equality & Human Rights, taking a structured approach that applies equality and human rights legal principles to help us make and record decisions about the provision of services.
- Submitted a response to the revised EHRC code of practice endorsed by the Executive Directors Group with a focus on securing accessible and clear statutory guidance that NHS Lothian can apply in employment and service situations that are relevant to the performance of our public functions.
- Are planning an audit of relevant services to determine if we need to provide these services on a separate or single sex basis and, if we do, can the exclusion of people of the opposite biological sex be objectively justified to be compliant with the Equality Act 2010.

2.3.2 Workforce

Since the Supreme Court judgment, we:

- Have issued guidance to line managers reflecting the advice from CLO and advised them if they are affected by issues raised by the judgment or have any questions to contact Deputy Director of People and Culture and Head of Equality and Human Rights. Three employment-related enquiries about access to staff toilet and changing facilities have been received. The facts in each situation have been identified and recorded, and a holding position has been agreed with the managers so they can explain to staff that a decision will be made once Counsels' opinion has been received.
- Have removed and replaced guidance on HR Online (intranet) about supporting transitioning staff and gender inclusive workplaces with the guidance to line managers.
- Have published an All Staff Update in the Weekly Brief 15 May 2025 from Caroline Hiscox to mark international day against homophobia, biphobia and transphobia that emphasised NHS Lothian's commitment to fostering a workplace culture and environment that values and respects everyone.
- Have updated equality and human rights training resources to reflect the judgment and current position.
- Have held information sessions for CMT members and Employee Relations staff about the judgment and possible implications.
- Have completed an audit of staff changing, shower and toilet facilities against the requirements of the Workplace (Health, Safety and Wellbeing) Regulations 1992

across all sites. We are in the process of understanding the findings and will develop recommendations to update facilities in line with Counsels' advice.

- Are establishing a short life working group (SLWG) with representatives from estates and facilities, equality and human rights, HSCPs, human resources, medical, nursing and partnership to agree, monitor and review the actions that are needed in relation to employment and services to ensure NHS Lothian is compliant with equality, health and safety and human rights law. The SLWG will use Counsels' advice to inform any required changes in policies and practice until such time as the EHRC revised code of practice is published.

2.3.3 Financial

The financial impact is not known at this time. The most significant financial impact is likely to relate to the provision of suitable workplace toilet, washing and changing facilities.

2.3.4 Risk Assessment/Management

NHS Lothian faces increased questions and scrutiny about our approach to the provision of single or separate sex services and workplace toilet, changing and washing facilities for women, men and trans people. This is from external sources (through FOI requests, and media and MSP enquiries) and from staff who are looking for guidance and support.

The risk of non-compliance with the law following the clarification provided by the Supreme Court is being managed by:

- Instructing Counsels' and using their opinion to inform any changes until such time as the revised EHRC Code of Practice is published.
- The audit of workplace facilities.
- The proposed audit of relevant services.
- The establishment of a SLWG to agree and oversee the implementation and impact of any changes.
- Executive oversight of decisions regarding the handling of any elated matters that could result in an Employment Tribunal, with recourse to CLO as necessary.

2.3.5 Equality and Diversity, including health inequalities

The Equality Act 2010 Public Sector Equality Duty requires NHS Lothian to have 'due regard' when carrying out relevant public functions to the need to 1) eliminate unlawful discrimination and harassment, and 2) advance equality of opportunity and 3) foster good relations between people who share a relevant protected characteristic and those who don't.

The Scotland Specific Equality Duties require NHS Lothian to carry out an equality impact assessment of any new or revised policies or practice when it is necessary to fulfil the Public Sector Equality Duty.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 requires NHS Lothian to act in a way that is compatible with relevant UNCRC rights. In NHS Lothian, we use equality and children's rights impact assessments (ECRIA) to help ensure compliance with our equality and children's rights duties.

It has not been necessary to carry out an ECRIA because we are not at this stage proposing any new or revised policies or practices. In addition, this paper, and the action taken since the Supreme Court judgment, demonstrates that NHS Lothian is giving due regard to 'equality' when carrying out its relevant public functions as an employer and service provider.

When proposed new or revised policies or practices are being developed consideration will be given to whether an ECRIA is necessary to help NHS Lothian have due regard to equality. ECRIA's will be carried out and used to inform these proposals where it is necessary to do so.

2.3.6 Other impacts

None.

2.3.7 Communication, involvement, engagement and consultation

We have issued staff communications about NHS Lothian current position following the Supreme Court judgment. As part of completing any relevant ECRIAs we will ask for relevant equality evidence from the equality staff networks and trade unions.

2.3.8 Route to the Meeting

This update was requested from the Chair of the Staff Governance Committee.

3 Recommendation

The information in this paper is for Committee members' information and members are asked to agree and accept a **moderate** level of assurance around the appropriateness of NHS Lothian's response to the issues raised via the Supreme Court ruling. This is because while suitable and effective controls are in place to manage risk through the actions explained in 2.3.4 of this paper, residual risk remains because further action may be required once the revised EHRC Code of practice is published.

NHS Lothian

16.

Meeting: **Corporate Management Team**

Meeting date: **6 May 2025**

Title: **Provision of Single Sex Facilities and Services**

Responsible Executive: **Tom Power (Director of People and Culture)**

Report Author: **Laura Hutchison (Head of Equality & Human Rights)**

1 Purpose

This report is presented for:

Assurance	☐	Decision	☒
Discussion	☐	Awareness	☐

This report relates to:

Annual Delivery Plan	☐	Local policy	☐
Emerging issue	☐	NHS / IJB Strategy or Direction	☒
Government policy or directive	☐	Performance / service delivery	☐
Legal requirement	☒	Other	☐

This report relates to the following LSDF Strategic Pillars and/or Parameters:

Improving Population Health	☐	Scheduled Care	☐
Children & Young People	☐	Finance (revenue or capital)	☐
Mental Health, Illness & Wellbeing	☐	Workforce (supply or wellbeing)	☒
Primary Care	☐	Digital	☐
Unscheduled Care	☐	Environmental Sustainability	☐

This aligns to the following NHSScotland quality ambition(s):

Safe	☒	Effective	☐
Person-Centred	☒		

Any member wishing additional information should contact the Responsible Executive (named above) in advance of the meeting.

2 Report summary

2.1 Situation

On 16 April, the Supreme Court issued its judgment in **For Women Scotland v Scottish Ministers**. The question for the Supreme Court was to determine the statutory interpretation of the definition of the protected characteristic of sex in the Equality Act 2010 (EA 2010). In particular, whether the EA 2010 treats a trans woman with a Gender Recognition Certificate (GRC) as a woman for all purposes within the scope of the Act, or when the EA 2010 speaks of a woman and sex it is referring to a biological woman and biological sex.

The Supreme Court judgment concluded that the protected characteristic of sex in the EA 2010 means biological sex, biological woman, and biological man. It also concluded that this does not disadvantage trans people, with or without a Gender Recognition Certificate (GRC) because trans people are protected from direct discrimination and harassment and indirect discrimination.

The judgment is particularly relevant for organisations such as the NHS that have legal duties to provide single or separate sex facilities and services for staff and public, to not discriminate and harass people in relation to sex and gender reassignment, to promote and protect human rights and to advance equality and foster good relations. It has exemplified questions about the interpretation of other parts of the Act, including the exceptions that allow, in certain circumstances, the provision of single or separate sex services and facilities, and the exclusion of trans people from these services and facilities.

CMT is asked to:

1. Note the current position in relation to the Supreme Court judgment and the assessment set out in this paper.
2. Agree the following response until such time as the EHRC updated Code of Practice is available:
    - Continue to ask staff to follow the guidance set out in the NHS Lothian Guidance Supporting trans staff and gender inclusive workplaces (see appendix 1).
    - Carry out a review of NHS Lothian guidance, practices and training when the updated EHRC Statutory Code of Practice is in force, and/ or when guidance from the Scottish Government is available.
    - Begin the proposed audit of staff changing, shower and toilet facilities.
    - Send short all-staff communication that explains:
        - We will review our guidance and practice when the updated EHRC Code of Practice and/ or Scottish Government guidance is available.
        - It is important that in NHS Lothian we continue to behave in a way that upholds our shared values of care and compassion, dignity and respect, quality, teamwork, openness, honesty and responsibility.
        - Staff should contact the Equality & Human Rights and Employee Relations teams, the staff equality networks and trade unions if they have any questions or need support or advice.
    - Contribute to the EHRC public consultation as part of efforts to gain clarity about the practical implications of the Supreme Court judgment.
    - Update the Board.

2.2 Background

The Gender Representation on Public Boards (Scotland) Act 2018 provides for positive action measures to be taken in relation to the appointment of women to non-executive posts on boards of specified Scottish public authorities. The Scottish Government guidance about the 2018 Act said that 'woman' has the meaning as set out in the EA 2010 for the protected characteristic of sex and where a full GRC has been issued to a trans woman. This guidance was challenged as unlawful.

To answer the question whether the EA 2010 treats a trans woman with a GRC as a woman for all purposes within the scope of the EA 2010, the Supreme Court went through the provisions in the Act that specifically apply to/ mention the protected characteristic of sex. Their judgment is summarised at paragraph 264 (p83):

'This examination of the language of the EA 2010, its context and purpose, demonstrate that the words "sex," "woman" and "man" mean (and were always intended to mean) biological sex, biological woman and biological man. These and the other provisions to which we have referred cannot properly be interpreted as also extending to include certificated sex without rendering them incoherent and unworkable.'

Single sex facilities and services

As part of their examination of the provisions in the EA 2010 that apply to/ mention sex, the Supreme Court considers the exceptions about single and separate sex services and gender reassignment (paras 211 -221 (pp63 - 68)).

The judgment goes through the different statutory conditions that must be met in order for single and separate sex services to be lawful. If one or more of the conditions are not met, providing a service in this way would otherwise be unlawful sex discrimination. The Supreme Court identifies practical difficulties that will arise in relation to the workability of these provisions if sex means biological and certificated sex.

In doing so the Supreme Court refers to several examples of single or separate sex facilities or services, such as cervical screening services and female only changing rooms. In these examples, the Supreme Court acknowledges there may be situations when a woman/ women may reasonably object to the presence of a trans woman and the EA 2010 must have intended to accommodate this by including the gender reassignment exception that allows for the exclusion of trans people if the statutory conditions are met and it is proportionate to do so.

"While many women in a female only changing room or on a women-only hospital ward or in a rape counselling group might reasonably object to the presence of biological males, it is difficult to see how the reasonableness of such an objection could be founded on possession or lack of a certificate. This is especially so when the distinction does not track physical appearance or presentation, and the woman is unlikely to have any information about the GRC at the point at which her objection might be raised. A trans woman with a GRC who presents fully as a woman may feel she is more likely to prompt objections from other users if she enters the men's changing room or other facilities than if she uses the women's changing room or facilities. But in facing that dilemma she is in the same position as a trans woman without a GRC. Although such trans women may in practice choose to use female-only facilities in a way which does not in fact compromise the privacy and dignity of other women users, the Scottish Ministers do not suggest that a trans woman without a GRC is legally entitled to do so" (para 217).

"*If sex means biological sex, then provided it is proportionate, the female only nature of the service would permit the exclusion of all males including males living in the female gender regardless of GRC status. Moreover, women living in the male gender could also be excluded without this amounting to gender reassignment discrimination. This might be considered proportionate where reasonable objection is taken to their presence, for example, because the gender reassignment process has given them a masculine appearance or attributes to which reasonable objection might be taken in the context of the women-only service being provided. Their exclusion would amount to unlawful gender reassignment discrimination not sex discrimination absent this exception" (para 221).*

EHRC interim update

The EHRC published an interim update on the practical implications of the UK Supreme Court judgment on 25 April 2025. This includes information about the provision of single-sex facilities in workplaces and services but does not contain information about the provision of single-sex services. The update says:

In workplaces and services that are open to the public:

- *Trans women (biological men) should not be permitted to use the women's facilities and trans men (biological women) should not be permitted to use the men's facilities, as this will mean that they are no longer single-sex facilities and must be open to all users of the opposite sex.*
- *In some circumstances the law also allows trans women (biological men) not to be permitted to use the men's facilities, and trans men (biological woman) not to be permitted to use the women's facilities.*
- *However, where facilities are available to both men and women, trans people should not be put in a position where there are no facilities for them to use.*
- *Where possible, mixed-sex toilet, washing or changing facilities in addition to sufficient single-sex facilities should be provided.*
- *Where toilet, washing or changing facilities are in lockable rooms (not cubicles) which are intended for the use of one person at a time, they can be used by either women or men.*

A number of concerns have been raised about the EHRC interim update, including:

- There appears to be a suggestion that an employer is required to "out" a trans employee. This carries the risk of direct gender reassignment discrimination and harassment, interference with the right to a private and family life under Article 8 of the European Convention of Human Rights and, in situations when a trans person has changed their legal sex via a GRC, it also includes the risk of criminal prosecution for disclosing protected information relating to a person who has applied for a GRC. For example, in the case of a trans man who is not known by colleagues to be trans and has been using the male facilities, if the information in the interim update is followed, this will mean he is required to use the women's facilities and could result in disclosure of his transition.
- It does not address how to balance providing single-sex facilities against the rights of trans people not to be discriminated or harassed in relation to their gender reassignment. Complaints/ claims may still be possible because the EA 2010 does not specifically address single-sex facilities in workplaces. It deals with single sex facilities which are made available for public use by service providers, but not those made available by employers solely for their staff.

NHS England Employers' Statement

On Friday 2 May, NHS England Employers organisation issued the following statement to its members.

The recent ruling by the UK Supreme Court and what it means for the 'definition of sex and woman in the Equality Act (2010)' will have raised questions for many service users and service providers. While we await what this means in practice for trans people working in healthcare, and those accessing services, the work to reduce the unacceptably high levels of bullying, harassment and violence at work that trans and non-binary staff and patients face continues. The Equality and Human Rights Commission (EHRC) is planning to develop a revised Code of Practice which is expected this summer.

The UK Government will need to confirm what the ruling of the UK Supreme Court on the updated interpretation of the Equality Act 2010 means for health and care providers and the use of their facilities. Our members await the Government's updated guidance as they also continue to take account of the public sector equality duty. The NHS Confederation will then review its informal guidance for trans and non-binary healthcare staff.

For more information, see this Capsticks Insight: Supreme Court: the meaning of the term "woman" in the Equality Act 2010 \| Capsticks

2.3 Assessment

2.3.1 Quality/ Patient Care

NHS Lothian provides single and separate services, for example gynaecological, andrology and health screening services and some single-sex wards.

NHS Lothian can provide single or separate sex services if specific conditions are met, and the limited or separate service is a proportionate way of achieving the specific conditions. The conditions that need to be met are set out in the EA 2010.

The EHRC statutory code of practice for services continues to apply. This includes information about when it is not unlawful sex discrimination to provide separate and single sex services for each sex (para 13.51 – 13.56 pp200 - 203) and when the EA 2010 does permit service providers to provide a different service or exclude a trans person (para 13.57 -13.58 pp 204). It states:

"If a service provider provides single or separate sex services for women and men, or provides services differently to women and men, they should treat trans people according to the gender role in which they present. However, the Act does permit the service provider to provide a different service or exclude a person from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate aim. It explains that the intention is to ensure that the trans person is treated in a way that best meets their needs. Service providers need to be aware that trans people may need access to services relating to their birth sex which are otherwise provided only to people of that sex. For example, a trans man may need access to breast screening or gynaecological services. In order to protect the privacy of all users, it is recommended that the service provider should discuss with any trans service user the best way to enable them to have access to the service."

The EHRC interim update explains that they aim to provide an updated Code of Practice to the UK Government by the end of June for ministerial approval. They will also undertake a short public consultation in mid-May that will last for two weeks to understand how the practical implication of the Supreme Court judgment may be best reflected in the updated Code. This will support service providers, public bodies and associations to understand their duties under the EA 2010 and put them into practice.

2.3.2 Workforce

NHS Lothian provides separate toilet, changing and washing facilities for male and female staff. Gender neutral facilities are also provided in some areas. However, the extent of this provision varies across sites.

The requirement to provide separate facilities for women and men (toilets, changing and washing facilities) for staff is set out in The Workplace (Health, Safety and Welfare) Regulations 1992.

The EA 2010 provides that employers must not discriminate against employees on grounds of gender reassignment as to their terms of employment or by subjecting employees to any other detriment (s.38). Employers must also not harass employee in relation to gender reassignment (s.40).

2.3.3 Financial

None.

2.3.4 Risk Assessment/Management

NHS Lothian faces increased questions about our approach to the provision of single and separate services and facilities for women, men and trans people. This is from both external sources and staff who are looking for guidance and support.

The Supreme Court judgment may, at this time, provide some reassurance about our current guidance because it:

- Does not distinguish between trans people with a full GRC and those without.
- Follows the current EHRC statutory code of practice and says that if we need to make a decision about whether to exclude trans people from single or separate sex services or facilities, we need to do that on a case-by-case basis to determine if it's lawful.

However, we need to review our guidance, practices and training to ensure that it reflects the law as it stands.

2.3.5 Equality and Diversity, including health inequalities

An equality and children's rights impact assessment is not relevant or necessary at this point because we are not proposing any new or revised policies or practices. This paper aims to provide a summary of the relevant parts of the Supreme Court case, an initial assessment of risk and recommendations to manage risk.

2.3.6 Other impacts

None.

2.3.7 Communication, involvement, engagement and consultation

None. As part of reviewing our workplace practice and guidance we will involve and consult the equality staff networks and trade unions.

2.3.8 Route to the Meeting

Meeting with Directors of Public Health and Health Policy, Communication, Estates and Facilities and People and Culture.

2.4 Recommendation

Decision– CMT is asked to:

1. Note the current position in relation to the Supreme Court judgment, the Equality and Human Rights Commission's (EHRC) interim update on the practical implications of the UK Supreme Court and the assessment set out in this paper.
2. Agree the following response until such time as the EHRC updated Code of Practice is available.
   - Continue to ask staff to follow the guidance set out in the NHS Lothian Guidance Supporting trans staff and gender inclusive workplaces (see appendix 1).
   - Carry out a review of NHS Lothian guidance, practices and training when the updated EHRC Statutory Code of Practice is in force, and/ or when guidance from the Scottish Government is available.
   - Begin the proposed audit of staff changing, shower and toilet facilities as soon as practicable.
   - Send short all-staff communication that explains:
     - We will review our guidance and practice when the updated EHRC Code of Practice and/ or Scottish Government guidance is available.
     - It is important that in NHS Lothian we continue to behave in a way that upholds our shared values of care and compassion, dignity and respect, quality, teamwork, openness, honesty and responsibility.
     - Staff should contact the Equality & Human Rights and Employee Relations teams, the staff equality networks and trade unions if they have any questions or need support or advice.
   - Contribute to the EHRC public consultation as part of efforts to gain clarity about the practical implications of the Supreme Court judgment.
   - Update the Board.

3 List of appendices

The following appendices are included with this report:

- Appendix 1 NHS Lothian Supporting trans staff and gender inclusive workplaces

Appendix 1

Supporting trans staff and gender inclusive workplaces
NHS Lothian guidance

1. Introduction

People who feel supported at work, and by their line-manager have a better sense of wellbeing in the workplace and do their jobs better. All NHS Lothian staff are entitled to work in, and be part of, an inclusive and positive workplace culture and environment.

Gender inclusive workplaces are places where all staff behave in a way that does not discriminate against a particular sex, social gender or gender identity and do not perpetuate gender stereotypes.

All NHS Lothian staff must treat everyone in a dignified, non-discriminatory way in the workplace. Every line manager has a responsibility to promote equal opportunities and proactively take steps to prevent discrimination and harassment.

This is central to putting into practice NHS Lothian's shared values of care and compassion; dignity and respect; quality; teamwork and openness, honesty, and responsibility. These values all play an important part in providing safe effective person-centred healthcare and improving health.

2. Purpose

This guidance provides line managers with information to help them support and meet the needs of trans staff and create gender inclusive workplaces for everyone. It includes information about how to support someone who is transitioning, including using single or separate sex facilities and aims to help increase understanding, reduce prejudice and support positive and professional relationships.

The information is taken from the Equality and Human Rights Commission Employment and the Services and Public Functions statutory codes of practice and the Gender Recognition Act 2004.

3. Legal responsibilities

Everyone who works for NHS Lothian must not discriminate or harass someone in relation to any of the nine characteristics that are protected by the Equality Act 2010. The Equality Act 2010 prohibits discrimination and harassment on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 also places an equality duty on everyone working for NHS Lothian to consider how they could positively contribute to the advancement of equality and good relations in their work.

The Human Rights Act 1998 makes it unlawful for a public body, including NHS Lothian, to act in a way that is incompatible with the rights set out in the European Convention on Human Rights (ECHR). The rights that are particularly relevant to this guidance include Article 8 - the right to respect for private and family life, home and correspondence, Article 9 - the right to freedom of thought, conscience and religion, and Article 14 - the right to enjoy ECHR rights without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

4. What do we mean when we talk about sex and gender?

Sex and gender are terms that are often used interchangeably but they are two different things.
In the Equality Act 2010, sex means any man or woman of any age. In relation to a group of people it means either men and/ or boys or women and/or girls.

The United Nations explains that gender refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and learned. They are context/ time-specific and changeable.

5. What do we mean when we talk about gender reassignment and trans?

In the Equality Act 2010, people who have the characteristic of gender reassignment are proposing to undergo, are undergoing or have undergone a process (or part of a process) to reassign their sex by changing physiological or other attributes of sex.

The Equality Act 2010 describes people who have the protected characteristic of gender reassignment as transsexual people. Now this term is considered outdated, and it is more appropriate to use the term 'trans.'

Gender reassignment is a personal process, when someone is moving away from their birth sex to the gender they identify with, rather than a medical process. It may include going through medical gender affirming treatments such as hormone therapy and surgery, but not all trans people want or are able to have these. Each person's transition will involve different things and might involve telling family and friends, dressing differently, and changing their name and official documents.

Someone who identifies as non-binary will be protected from gender reassignment discrimination and harassment if they meet the definition of gender reassignment in the Equality Act 2010.

There is no requirement for trans people to tell their employer about their gender reassignment status. For example, we may not know someone's trans history if they have been living for some time in the gender they identify with. However, if someone is proposing to undergo gender reassignment or is in the process of transitioning, they may want to discuss this with their line manager so they can be supported through the process.

6. Gender recognition certificate

The Gender Recognition Act 2004 provides trans people with legal recognition of the gender they identify with. To obtain legal recognition, trans people must go through a defined process and a Gender Recognition Panel must be satisfied that someone has, or has had, gender dysphoria, has lived in the gender they identify with throughout the previous two years and intends to live in this gender until death. In practical terms, legal recognition is provided by issuing a Gender Recognition Certificate (GRC) and this allows people to get a new birth certificate reflecting their new gender.

The Gender Recognition Act 2004 provides that when someone has a GRC, they must be treated according to the gender they identify with. However, trans people do not need to have a GRC, and should not routinely be asked to produce it as evidence of their legal gender. To do so will compromise a trans person's right to privacy. If there is a requirement to see proof of someone's legal gender, for example as part of recruitment, then their birth certificate is sufficient confirmation.

7. Understanding needs

When someone decides to share with their line manager that they are transitioning, it is good practice to speak sensitively to them about their needs to understand if there are any reasonable and practical steps that can be taken to help them.

Everyone involved in these conversations must maintain confidentiality, except where agreement has been given beforehand. For example, a line manager may ask for guidance and support from HR but must not disclose the person's identity unless permission to do so has been given by them.

8. Confidentiality

No one should disclose information about someone's gender reassignment without their explicit written consent. Such a disclosure may be a criminal offence.

9. Name change

If someone changes their name as part of their transition, their line manager will need to amend eESS records and these changes will transfer to the payroll department where amendments to SSTS and pension records will be made. They will need to update their own details on TURAS and LearnPro and other relevant systems, and they may also need a new ID badge, log-in details and email address.

There is no legal requirement to amend records that predate someone's transition. However, it is good practice to think about any documentation that is publicly available and agree how to manage any name change that might alert people to someone's trans history.

10. Toilets and changing facilities

The Equality Act 2010 allows facilities for staff to be provided separately, or differently, for men and women, such as toilets or changing facilities. This means that when NHS Lothian provides separate male and female toilet or changing facilities, we are allowed, for example, to tell men they cannot use female toilets or changing facilities.

However, if we refuse to allow a trans person to use the toilet or changing facilities that they feel comfortable using, this could be unlawful discrimination on grounds of gender reassignment.

If there are single or separate sex toilet or changing facilities for women and men, NHS Lothian staff should treat trans people according to the gender role they present. In particular, where a trans person is visually and for all practical purposes indistinguishable from a non-trans person of that gender, they should normally be treated according to the gender they identify with, unless there are strong reasons to the contrary.

The Equality Act 2010 does allow NHS Lothian to provide a different service or to exclude a trans person from single or separate sex facilities. There may be some, limited, circumstances when excluding trans people from using separate or single sex toilet or changing facilities may be lawful. However, this will only be allowed if the exclusion is a proportionate means of achieving a legitimate aim. There must therefore be a very good, evidence-based reason for excluding a trans person, this reason must not be based on prejudice, and other less discriminatory steps should have been considered.

These kinds of decisions must be made on a case-by-case basis and line managers must balance the needs of the trans person to use this facility, against the needs of other members of staff and whether they will experience any disadvantage if the trans person is allowed to use the facilities. To do this will often require careful and sensitive discussions with all the staff affected (maintaining confidentiality for the trans person). Care should be taken in each case to avoid a decision based on ignorance or prejudice.

11. Further advice

HR Online
Human Resources Enquiries HR.Enquiries@nhslothian.scot.nhs.uk or call 0131 536 1130.
Equality and Human Rights Team loth.equalityandhumanrights@nhslothian.scot.nhs.uk

NHS LOTHIAN

STAFF GOVERNANCE COMMITTEE

Minutes of the meeting of the Staff Governance Committee held at 9.30am on Wednesday 24 September 2025 via Microsoft Teams.

Present: Ms V. de Souza, Non-Executive Board Member (Chair); **Ms E. Gordon** (Non-Executive Board Member) and **Mr J. Innes** (Non-Executive Board Member)

In Attendance: Mr T. Power, Mr T. Power, Director of People & Culture, Human Resources, **Mrs R. Kelly** (Deputy HR Director), **Ms A. MacDonald (**Executive Nurse Director); **Ms M. Campbell** (Director of Facilities); **Ms A. Langsley** (Associate Director - People and Culture); **Ms L. Cunningham** (Partnership Representative); **Ms H. Johnstone** (Partnership Representative); **Ms K. Moffatt** (Lead Nurse - Palliative Care, WGH – Item 2) **Ms F. Ogundipe,** (Director of Occupational Health & Safety Services – Item 7.4); [redacted] (Clinical Lead, Advanced Practice Physiotherapist- Observing) and [redacted] (Corporate Governance Team -Minute).

Apologies for absence was received from: Miss T. Gillies (Executive Medical Director) and **Ms T. Miller** (Employee Director); **Ms C. Hiscox** (Chief Executive); **Mr J. Crombie** (Deputy Chief Executive); **K. Kasper** (Non-Executive Board Member) and **Mr D. Thompson** (Board Secretary).

Observing: Vicky Graham - Clinical Lead GP Advanced Practice Physiotherapist (Shadowing Amanda Langsley)

CHAIR'S WELCOME AND INTRODUCTIONS

Members were reminded that they should declare any financial or non-financial interests they had in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

24. Declaration of Conflicts of Interest

24.1 No interests were declared

25. [redacted]

25.1 [redacted]

25.2 [redacted]

25.3 [redacted]

25.4 [redacted]

25.5 [redacted].

25.6 [redacted]

26. [redacted]

26.1 [redacted]

27. [redacted]

27.1 [redacted]

28. [redacted]

28.1 [redacted]

28.1.1 [redacted]

28.1.2 [redacted] suspension so staff on maternity leave can continue to access online information and updates.

28.1.3 [redacted]

28.1.4 [redacted]

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2

28.1.5 [redacted] RK

28.1.6 [redacted]

28.1.7 [redacted].

28.2 [redacted]

28.2.1 [redacted]

28.2.2 [redacted]

28.2.3 [redacted]

28.3 [redacted]

28.3.1 [redacted]

28.3.2 [redacted]

28.3.3 [redacted]

28.3.4 [redacted]

28.3.5 [redacted] RK

29. [redacted]

29.1 [redacted]

29.1.1 [redacted]

29.1.2 [redacted]

29.1.3 [redacted]

29.1.4 [redacted]

29.1.5 [redacted]

29.2 [redacted]

29.2.1 [redacted]

29.2.2 [redacted]

29.2.3 [redacted]

29.2.4 [redacted]

29.3 [redacted]

29.3.1 [redacted]

29.3.2 [redacted]

29.3.3 [redacted]

29.3.4 [redacted]

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29.3.5 [redacted]

30. [redacted]

30.1 [redacted]

30.1.1 [redacted]

[redacted]

[redacted]

30.1.2 [redacted].

30.2.1 [redacted]

30.2.2 [redacted]

30.2.3 [redacted]

30.2.4 [redacted]

30.2.5 [redacted]

30.2.6 [redacted]

30.2.7 [redacted]

30.3.1 [redacted]

30.3.2 [redacted]

30.3.3 [redacted]

30.3.4 [redacted]

30.3.5 [redacted]

30.4.1 [redacted]

30.4.2 [redacted]

30.4.3 [redacted]

30.4.4 [redacted]

30.5.1 [redacted]

30.5.2 [redacted]

30.5.3 [redacted]

30.5.4 [redacted]

30.5.5 [redacted]

30.5.6 [redacted]

30.5.7 [redacted]

30.6.1 [redacted]

30.6.2 [redacted]

30.7.1 Implications of the Supreme Court judgment on meaning of sex in the Equality Act 2010 – Update
The Director of People & Culture presented an update on the Supreme Court judgement. Two meetings of a short-life working group have been held to consider its implications and to develop recommendations for the Chief Legal Officer and operational response.

30.7.2 An audit of facilities, including toilet and changing spaces across main sites, has been completed and required changes implemented. Further work is needed in additional areas; a summary of Phase 1 findings will be reviewed at the October short life working group meeting to assess facilities compliance.

30.7.3 Draft legal advice received in July identified points for clarification with the CLO, including the consistent use of terminology around sex and gender to avoid misinterpretation. Further legal work is underway, and a revised legal position is expected in the coming weeks, with elements to be shared with the board.

30.7.4 The short-life working group will develop guidance and determine appropriate staff support informed by the audit findings. The group is awaiting the code of practice and the outcome of the NHS Fife report to finalise recommendations, and the Terms of Reference will be shared with the Committee.

30.7.5 The Committee noted that rules and regulations must be applied so all staff are treated equally and that the group will continue to consider issues on a case-by-case basis

30.8.1 [redacted]

30.8.2 [redacted]

31 [redacted]

31.1 [redacted]

3.1.2 [redacted]

3.1.3 [redacted]

32. [redacted]

32.1 [redacted]

32.2 [redacted]

33 [redacted]

33.1 [redacted]

33.2 [redacted]

34.1 [redacted]

34.2 [redacted]

35. Date of Next Meeting

35.1 Date of Next meeting: Monday 15 December 2025 at 9.30am

NHS LOTHIAN

STAFF GOVERNANCE COMMITTEE

Minutes of the meeting of the Staff Governance Committee held at 9.30am on Wednesday 30 July 2025 via Microsoft Teams.

Present: Ms V. de Souza, Non-Executive Board Member (Chair), Mr J. Innes (Non-Executive Board Member) and Ms K. Kasper (Non-Executive Board Member).

In Attendance: Ms C. Hiscox (Chief Executive), Mr T. Power, Director of People & Culture, Human Resources, Mr. J Crombie (Deputy Chief Executive), Miss T. Gillies (Executive Medical Director), Ms S. Preston (Senior HR Manager), Ms M. Campbell (Director of Estates and Facilities), Mr N. McAlister (Head of Workforce Planning), Ms L. Cunningham (Partnership Representative), Ms A. Langsley (Associate Director of OD & Learning), Miss F. Ireland (Deputy Director - Corporate Nursing & Business Support), Ms H. Johnstone (B4 Physiotherapy Assistant), , Staff Wellbeing Development Lead (MLHSCP)(Item 13); Ms F. Tynan (Associate Nurse Director, Corporate Nursing (Item 19.2); Mr D. Thompson (Board Secretary) and [redacted] (Corporate Governance Team Manager - Minute).

Apologies for absence were received from Ms T. Miller (Employee Director); Ms E. Gordon (Non-Executive Board Member); Mrs R. Kelly (Deputy Director of People & Culture) and Ms A. MacDonald (Executive Nurse Director, Nursing);

CHAIR'S WELCOME AND INTRODUCTIONS

Members were reminded that they should declare any financial or non-financial interests they had in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.

12. Declaration of Conflicts of Interest

12.1 No interests were declared.

13. [redacted]

13.1 [redacted]

13.2 [redacted]

[redacted]

13.3 [redacted]

13.4 [redacted]

[redacted]

14. [redacted]

14.1 [redacted]

14.2 [redacted]

15. [redacted]

15.1 [redacted]

16. [redacted]

16.1 [redacted]

16.2 [redacted]

16.3 [redacted]

[redacted]

[redacted]

17. [redacted]

17.1 [redacted]

17.1.1 [redacted]

17.1.2 [redacted]

17.1.3 [redacted]

17.1.4 [redacted]

17.2 [redacted]

17.2.1 [redacted]

17.2.2 [redacted]

17.2.3 [redacted]

18. [redacted]

18.1 [redacted]

18.1.1 [redacted]

18.1.2 [redacted]

18.2 [redacted]

18.2.1 [redacted]

18.2.2 [redacted]

18.2.3 [redacted]

19. [redacted]

19.1 [redacted]

19.1.1 [redacted]

19.2 [redacted]

[redacted]

19.2.1 [redacted]

19.3 [redacted]

19.3.1 [redacted]

[redacted]

19.4 Implications of the Supreme Court judgment on meaning of sex in the Equality Act 2010: Update

19.4.1 T*he Director of People & Culture provided an update on NHS Lothian's ongoing planning and actions in response to the UK Supreme Court ruling in For Women Scotland Ltd v The Scottish Ministers (UKSC 16). It was reported that an internal short-life working group had been established to review and oversee the implementation of required actions and assess their impact, informed by the results of an ongoing audit of spaces and facilities across NHS Lothian's estate.*

19.4.2 Members noted that professional legal advice had been commissioned, with a formal legal opinion received in July, which would also inform ongoing actions and the assessment of risk. Members stressed the need for the Board to be kept informed and to have a clear understanding of its legal duties and any associated compliance risks, informed by the legal opinion received. The Director of People & Culture agreed to consider how this could best be

achieved amongst Board and Committee members, whilst ensuring the protection of legal privilege. As a minimum, there would be continued standing updates to the Committee as work progressed.

TP

19.4.3 The Committee accepted a moderate level of assurance regarding NHS Lothian's current response, acknowledging that there was a continuing level of residual risk."

19.5 [redacted]

19.5.1 [redacted].

20. [redacted]

20.1 [redacted]

20.1.1 [redacted]

20.1.2 [redacted]

20.2 [redacted]

20.2.1 [redacted]

21. [redacted]

21.1 [redacted]

[redacted]

21.2 [redacted]

21.2.1 [redacted]

[redacted]

- Single Sex Spaces report to all governance committee chairs.

22. [redacted]

22.1 [redacted]

23. Date of Next Meeting

23.1 Date of Next meeting: Wednesday 24 September 2025 at 9.30am