

Date 10 September 2026
Your Ref
Our Ref 11824

Enquiries to Richard Mutch
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Dear

FREEDOM OF INFORMATION – POLICY ON TRANS AND NON-BINARY PEOPLE

I write in response to your request for information in relation to NHS Lothian policy on trans and non-binary people - as service users and employees.

Question:

- I am aware that NHS Lothian has a policy on the above area, and I assume that it is being reviewed as a direct result of the Supreme Court ruling in April 2025 on the definition of 'sex' as a protected characteristic. Given the court's decision was made over a year ago now, I am writing to ask NHS Lothian under the Freedom of Information (Scotland) Act 2002 to provide me with the following information.
- Has NHS Lothian completed a review of the policy in light of the For Women Scotland Ltd v The Scottish Ministers case decision?

Answer:

NHS Lothian does not have a policy on trans and non-binary people as service users and employees. As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise we do not hold this information.

Question:

- If so, please provide me with a copy of the reviewed policy, as well as a copy of the original policy

Answer:

See response to question 1 above.

Question:

- If not, please provide a date by when the review will be completed

Answer:

See response to question 1 above.

Question:

4. What was the definition of 'trans people' used by NHS Lothian prior to the Supreme Court decision and when was it first adopted?

Answer:

[This information is not held.](#) As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise we do not hold this information.

Question:

5. What was the legal basis for adopting such a definition – please state detailed citations of law(s)

Answer:

See answer to question 4 above.

Question:

6. What was the definition of 'non-binary people, used by NHS Lothian prior to the Supreme Court decision and when was it first adopted?

Answer:

[This information is not held.](#) As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise we do not hold this information.

Question:

7. What was the legal basis for adopting such a definition – please state detailed citations of law(s)

Answer:

See answer to question 6 above.

Question:

8. What is the current definition of 'trans people' being used by NHS Lothian as a result of the review process and aimed to be compliant with the Supreme Court decision – please include detailed citations of law(s) supporting this definition

Answer:

NHS Lothian does not have a policy on trans and non-binary people as service users and employees. Therefore, there is no review process and the information requested is not held.

However, it may be helpful to clarify that for the purposes of complying with our statutory responsibilities under the Equality Act 2010, NHS Lothian applies the definition of trans people used to define the protected characteristic of gender reassignment in the Equality Act 2010.

Question:

9. What is the current definition of 'non-binary people' being used by NHS Lothian as a result of the review process and aimed to be compliant with the Supreme Court decision – please include detailed citations of law(s) supporting this definition

Answer:

NHS Lothian does not have a policy on trans and non-binary people as service users and employees. Therefore, there is no review process and the information requested is not held.

However, it may be helpful to clarify that in NHS Lothian workforce guidance and training materials the explanation given for the term 'non-binary people' includes:

"Non-Binary gender: refers to people who identify their gender as not conforming to the binary model of gender. They may identify their non-binary gender as a combination of aspects of men and women or alternatively as being neither men nor women. Examples of labels people may use to describe their non-binary gender include Androgyne / Polygender / Genderqueer; some people may use no label at all."

"Non-binary person - A person who doesn't identify as male or female. Some non-binary people see themselves as trans people too."

In relation to the request for 'detailed citations of law(s) supporting this definition,' this information is not held. As per Section 17 of the Freedom of Information (Scotland) Act 2002 formally I must advise we do not hold this information.

Question:

10. As part of the overall review process, what steps has NHS Lothian taken to ensure that the voices of staff and service users who hold 'gender critical' views have/have had a sustained and detailed involvement in the review process?

Answer:

NHS Lothian does not have a policy on trans and non-binary people as service users and employees. Therefore, there is no review process and the information requested is not held.

However, it may be helpful to clarify the consultation and involvement mechanisms that are included within NHS Lothian policy making process. This includes formal consultation with NHS Lothian Partnership Forums and their involvement in decision-making. Partnership Forums are where NHS Lothian, recognised trade unions and professional organisations work together to improve health services. Information about NHS Scotland's partnership approach is available here [Groups and Committees — NHS Scotland Staff Governance](#).

All new NHS Lothian workplace policies must go to the HR Policy Group for consideration and agreement. All new NHS Lothian services policies must go through the Policy Approval Group and associated process, which includes a 4 week consultation period. Information about NHS Lothian policies (with the exception of HR and Finance policies) is available here [Policy Pages – Policy Online](#).

For workforce related equality policy the views of the NHS Lothian staff equality networks are sought and considered during the development process. Information about NHS Lothian staff equality networks is available here [Staff Networks – NHS Lothian | Staff](#).

This information is exempt under Section 25 of the Freedom of Information (Scotland) Act 2002 - Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

Question:

11. Beyond the review process, what steps has NHS Lothian taken to ensure that the voices of staff and service users who hold 'gender critical' views are routinely involved in the development of policy and practice in future?

Answer:

Please see the response to question 10 above.

Question:

12. Finally, has the review process also looked at the evolution of NHS Lothian policy on trans and non-binary people to identify where the flawed position adopted by NHS Lothian was initiated or triggered, and what changes are being introduced to avoid a repeat of adopting flawed policy?

Answer:

Please see the response to question 1 above.

I hope the information provided helps with your request.

If you are unhappy with our response to your request, you do have the right to request us to review it. Your request should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If our decision is unchanged following a review and you remain dissatisfied with this, you then have the right to make a formal complaint to the Scottish Information Commissioner within 6 months of receipt of our review response. You can do this by using the Scottish Information Commissioner's Office online appeals service at www.itspublicknowledge.info/Appeal. If you remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

If you require a review of our decision to be carried out, please write to the FOI Reviewer at the email address at the head of this letter. The review will be undertaken by a Reviewer who was not involved in the original decision-making process.

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

Yours sincerely

ALISON MACDONALD
Executive Director, Nursing
Cc: Chief Executive