

Neil Gray MSP
Cabinet Secretary for Health and Social Care
Health Workforce Directorate
Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

18th February 2025

Dear Mr Gray

We write as groups concerned about recognising the importance of sex in law, policy and language, particularly as this relates to the rights of women. We are disappointed that the Scottish Government has sought to distance itself from recent events at NHS Fife, and the high-profile employment tribunal (*Peggie v NHS Fife and Dr Upton*).

In June 2024 Ms Peggie's solicitor advised you on the details of her case. We are surprised and dismayed that the Scottish Government did not take this opportunity to satisfy itself that NHS Fife was complying with its legal obligations to provide suitable single-sex workplace changing facilities for staff.

We are writing now to urge you to take appropriate action to make certain that NHS Scotland's policies ensure that staff are treated fairly and consistently, and in line with legal requirements when it comes to separate-sex facilities.

Ms Peggie's case has prompted significant, understandable public concern. Having separate-sex provision for toilets, washing and changing is a basic expectation for everyone at work. It is protected by law and should not have to be negotiated by individual employees. No woman should feel under pressure to undress in front of a male colleague, however they identify, in fear for her job.

Many women would feel deeply uncomfortable finding themselves in this situation. But instead of protecting Ms Peggie, NHS Fife has treated her as the aggressor. In bringing a legal case, Ms Peggie is exceptionally brave. Many women have told us they would feel afraid to speak up in a similar situation because they might lose their job.

NHS Scotland's draft *Workforce gender transitioning guide* fails to mention that employers are required by law to provide separate toilets, washing facilities and changing areas for men and women under Workplace (Health, Safety and Welfare) Regulations 1992. The guide, which is currently out for consultation and due for release this year, instead says that staff who identify as transgender must be allowed to use their "preferred facilities" unless there is a particular "case-by-

case” reason why they should not.¹ This guidance encourages NHS Boards to flout the workplace regulations and ignore their legal obligations. It puts their employees at risk of unlawful harassment and discrimination, and boards at risk of substantial legal and reputational costs, as we are now seeing.

In response to a freedom-of-information request,² NHS Fife confirmed in December 2024 that it would be adopting this guide as board policy as part of a broader policy on diversity and inclusion.

The Scottish Government needs to urgently consider the legality of this guidance. No exception to the workplace regulations is provided by the Equality Act 2010. The question of what the protected characteristic of sex in that act means is currently under consideration by the UK Supreme Court. It has however been settled law for three years that in the absence of a gender-recognition certificate an individual’s sex takes its natural common-law meaning.³

As Cabinet Secretary for Health and Social Care, you have a responsibility to ensure that NHS Scotland does not promote unlawful workplace policies. The burden of saying “no” to a staff member who wants to use opposite-sex facilities should not fall on the shoulders of an individual woman like Sandie Peggie, or even on individual managers or an individual NHS Board.

We call on you to:

- make an urgent unequivocal statement supporting the right of women and men working in the NHS to expect suitable separate-sex facilities
- instruct the Chief Executive of NHS Scotland and Scottish Government Director-General Health and Social Care, Caroline Lamb, to remind all NHS boards that they are expected to meet the 1992 workplace regulations
- instruct Ms Lamb to withdraw the draft *Workforce gender transitioning guide* and revise it to ensure that the rights of other staff and of patients are recognised and issue any new draft for consultation.

Copy goes to First Minister, John Swinney MSP.

Yours sincerely

Maya Forstater, Helen Joyce and Fiona McAnena, **Sex Matters**
Lucy Hunter Blackburn, Lisa Mackenzie and Kath Murray, **Murray Blackburn Mackenzie**
Trina Budge, Marion Calder and Susan Smith, **For Women Scotland**
Nicola Williams, **Fair Play For Women**

¹ NHS Scotland (2024). [Workforce gender transitioning guide](#).

² John Braithwaite (2024). [Request for single sex staff changing policy, chaperone policy and supporting transgender staff policies](#). *What Do They Know*.

³ Scottish Government (2024). [For Women Scotland Ltd \(Appellant\) v The Scottish Ministers \(Respondent\): supreme court hearing – statement of case](#).