

25 March 2026

By email from: info@forwomen.scot
to: nmcdowell1@eastlothian.gov.uk

Dear Ms McDowell,

We are writing regarding the *Gender Statement – Supporting Transgender Children and Young People in Schools* as [published](#) by the Education and Children's Services Committee on 17 March 2026. We are very concerned that this Gender Statement misstates the law in several key areas and induces school staff to act unlawfully, and we request that it is immediately withdrawn.

Following the UK Supreme Court judgment last April that “sex” in the Equality Act takes its ordinary biological meaning we served a Summons on the Scottish Government requiring it to withdraw the [Supporting Transgender Pupils in Schools \(2021\)](#) guidance on the grounds that it was inconsistent with the Supreme Court ruling. This was duly complied with in September 2025 and new guidance issued.

We are therefore perplexed to see aspects of the unlawful 2021 guidance resurface in East Lothian Council's Gender Statement, including the following sections:

- *Section 5.2 Physical Education*
“If PE classes are organised by sex assigned at birth, a transgender learner should be allowed to take part within the group which matches their gender identity”, and “Non-binary learners should be asked which group they would feel most comfortable being with.”

This section is entirely lifted from page 30 of the unlawful 2021 guidance and is not compliant with the Supreme Court judgment (see [para 171](#), for example) which makes it clear that when provision is made for one sex, it necessarily excludes the opposite sex. Neither “gender identity” or “non-binary” are protected characteristics and have no relevance when considering single-sex provision. A boy, even if he holds the protected characteristic of gender reassignment, does not change sex for the purposes of the Equality Act and has no right to join the girls PE class (and vice versa). Separate sports lessons for girls are important to uphold fair competition and prevent the risk of injury from boys who are generally bigger, stronger and faster than girls of the same age.

- *6.1 Day and Residential Visits*
“Giving consideration that enables all children and young people to share a room with the gender that most aligns to their identity, as long as the rights of all those involved are considered and respected.”

This erroneous advice is copied from page 32 of the 2021 guidance and is, again, contrary to the Supreme Court's ruling on the operation of separate sex accommodation. No "identity" held by a boy grants him access to rooms in which girls are sleeping and many parents would be alarmed if any school taking teenagers on an overnight trip ever considered this to be appropriate.

Section 3.1 is at least clear that schools must provide separate toilet facilities for boys and girls on the basis of biological sex but is muddled over the term "gender neutral". The addition of single-user rooms, over and above the minimum number of separate sex facilities required by the School Premises Regulations, may be beneficial for some pupils, but there is no provision in law for communal mixed-sex facilities. Any mixed sex provision is likely to lead to a breach of the Equality Act since local authorities have a positive obligation to prevent harassment related to a pupil's sex (Sections [85\(3\)](#) and [26](#)) and it is entirely foreseeable that at least some children, in particular girls, would experience such mixed sex toilets and changing rooms as a violation of their dignity or an intimidating, hostile, degrading, humiliating or offensive environment.

In order to clarify the situation in East Lothian schools we would appreciate if you could provide the following information:

1. The name of any primary or secondary school that has any communal toilet blocks/spaces with cubicles (no matter if they have full height doors and partitions) that are shared by both boys and girls.
2. Confirmation that (biological) boys are not permitted to use the girls toilets or changing rooms (and vice versa) under any circumstances.

The final section in the Gender Statement that we wish to bring to your attention has been copied from page 60 of the unlawful 2021 guidance and is as follows:

- *1.2 Key Legislation. Policy and Guidance*
"The Age of Legal Capacity (Scotland) (Act 1991) states that a child of 12 and over is presumed to have sufficient capacity to make decisions and enter into formal agreements on their own behalf."

In actual fact, this statement runs contrary to the provisions of the Age of Legal Capacity Act which states (at [Section 1](#)) that a person under the age of 16 years has **no** legal capacity to enter into any transaction. Exceptions to this are limited to instructing a solicitor and consenting to medical treatment, where capacity is subject to assessment by a medical professional.

This misunderstanding of the law has led to further serious misstatements in the Gender Statement such as "Children and young people, 12 and over and with capacity, can update educational records held for them." and "It [is] vital not to share information with parents or carers without considering and respecting the young person's views and rights."

Socially transitioning a child by changing pronoun use and the sex and name held on school records is a significant psychological intervention (see the [Cass Report](#)) which has consequences not just for that child, but also for their peers who are asked to participate in an exercise that may be against their philosophical beliefs. For those children under the age of legal capacity schools have a duty to first contact and consult with the child's parents to consider the best way forward, and to follow the parents' decision.

In the event of a difference between the child's request and their parents' decision there might be a case for intervention from the relevant child welfare authorities to seek to resolve this issue in the best interests of the child, but this would involve medical evidence from treating clinicians in support of the child's view. It would never be a matter on which a school alone might act unilaterally, however well meaning its views on the wellbeing of the child.

There can be no doubt that the Gender Statement contains numerous specific misstatements of the Equality Act and other legislation and, read as a whole, presents a misleading and erroneous picture of the true legal position. We would urge the council to seek specialist legal advice and, in the meantime, we would appreciate reassurance that the guidance will be immediately withdrawn from circulation.

Yours sincerely,

Trina Budge, Marion Calder and Susan Smith
Directors, For Women Scotland

For Women Scotland is a not-for-profit organisation working to protect women and children's rights and secured the landmark UK Supreme Court judgment providing clarity on the definition of sex as a biological term in the Equality Act 2010.

Winner of the Emma Humphreys Memorial Prize Legal Award 2025 and Political Campaigner of the Year Herald Award 2025.