

|                               |                                                                                                                                |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>Meeting:</b>               | NHS Grampian Board                                                                                                             |
| <b>Meeting date:</b>          | Thursday 8 October 2026                                                                                                        |
| <b>Item Number:</b>           | 10.1                                                                                                                           |
| <b>Title:</b>                 | Equality and Human Rights Commission: Code of Practice for Services, Public Functions and Associations Update                  |
| <b>Responsible Executive:</b> | Jay O'Brien, Director of People and Culture                                                                                    |
| <b>Report Author:</b>         | Roda Bird, Equality and Diversity Manager<br>Jenny Savage, Deputy Director of People and Culture and Head of People and Change |

## **1 Purpose and recommendations**

### **This is presented to the Board for:**

- Assurance

### **Recommendation(s)**

The Board is asked to:

- Receive assurance that NHS Grampian is reviewing policies and procedures for compliance.
- Note the update and implementation of the Culture Programme Board commission on responding to the Supreme Court Ruling.
- Note that a subsequent report, setting out further progress and outcomes, will be presented to the Board at a later date.

### **This report relates to:**

- Legal requirement

### **This aligns to the following NHS Scotland quality ambition(s):**

- Safe
- Effective
- Person Centred

## **2 Report summary**

### **2.1 Situation**

The updated Equality and Human Rights Commission (EHRC) Code of Practice provides statutory guidance for services, public functions and associations ('the Code'), which came into effect on 5<sup>th</sup> August 2026. The main purpose of the Code is to provide a detailed

explanation of the Equality Act 2010. The Code, together with the practical guidance produced by EHRC, will:

- Help in understanding our responsibilities and help to avoid complaints and discrimination claims
- Give guidance to ensure or facilitate compliance with the Act

The Code covers discrimination, harassment and victimisation in services and public functions. [Services Code of Practice comes into force | EHRC](#)

NHS Grampian is accountable for complying with the Equality Act 2010 and ensuring that our policies, practices and services operate within the law. It has implications for NHS Grampian service delivery, service users, the wider public, workforce, facilities, policy, equality outcomes and governance.

The EHRC will update its guidance for employers in due course to reflect developments in the law.

## **2.2 Background**

The Code of Practice was updated following the landmark ruling in *For Women Scotland v Scottish Ministers* [2025] UKSC 16. The Supreme Court in *For Women Scotland* ruled that 'sex', 'woman' and 'man' in the Act mean biological sex, biological woman and biological man. The judgment uses the expression 'biological sex' to describe the sex of a person at birth. A Gender Recognition Certificate (GRC) does not change a person's sex for the purposes of the Equality Act 2010.

## **2.3 Assessment**

The key messages are:

- The Supreme Court judgment confirms that "sex" under the Equality Act 2010 refers to biological sex.
- Gender reassignment remains a protected characteristic under the Equality Act 2010.
- Trans people continue to be protected from discrimination, harassment and victimisation.
- The EHRC Code does not create new law but provides statutory guidance on the interpretation and application of existing legislation.
- NHS Grampian must consider the implications both as an employer and as a public service provider.

NHS Grampian is actively considering the Code of Practice in the local context including how it will inform decision-making, policy development and the delivery of services.

The Equality and Diversity Manager is leading the Culture Programme Board (CPB) commissioned workstream in response to the Supreme Court ruling. This commission is providing strategic oversight of the key risks, implications and proposed

organisational approach across three areas: (a) facilities, (b) service provision and patient care, and (c) workforce matters.

A multidisciplinary Working Group will be established to support implementation and provide detailed consideration of the operational, legal and workforce impacts. The Group will develop and oversee the delivery of a programme of short-, medium- and long-term actions to ensure a coordinated and proportionate organisational response.

### **2.3.1 Quality / Patient Care**

NHS Grampian as service provider has a duty in ensuring any local response is lawful, proportionate, evidence-based and aligned with NHS values of dignity, compassion, respect and inclusion.

Service delivery considerations:

- Patient accommodation and ward environments.
- Changing facilities and toilet provision.
- Single-sex support groups or services.
- Services relying on single-sex exceptions under the Equality Act.
- Information and guidance provided to patients and service users.

Any decisions regarding single-sex services should be supported by evidence, risk assessment, appropriate equality considerations and clear documentation.

Clarity and consistency in service provision while maintaining privacy, dignity and safety.

### **2.3.2 Workforce**

NHS Grampian as an employer has a duty to provide workplace facilities and support arrangements for staff.

Potential areas for consideration:

- Toilet and changing facilities.
- Staff guidance, policies and communication.
- Staff engagement
- Equality, diversity and inclusion policies.
- Manager training and support arrangements.
- Processes for managing concerns, complaints and grievances.

The organisation must continue to ensure all staff are treated with dignity and respect and that protections for all protected characteristics are upheld.

### 2.3.3 Financial

NHS Grampian will review and update its assessment of implementation costs, risks and impacts, including financial, operational and workforce considerations.

Immediate costs are expected to be minimal, with potential expenditure primarily related to training and policy development. However, the findings of the facilities audit and any associated infrastructure changes may have financial implications for NHS Grampian and will be subject to further assessment and review.

Potential future costs may arise on legal advice. Potential legal costs can be mitigated through proactive compliance measure, including regular policy review, early legal advice, manager training, robust Integrated Impact Assessment, clear governance arrangements and comprehensive documentation of decisions. These measure help reduce the risk of complaints, disputes, legal challenges and associated financial costs.

### 2.3.4 Risk Assessment / Management

| <b>Risk</b>                                                  | <b>Potential Impact</b>                                                                                    | <b>Mitigation</b>                                                                                                                                         |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Legal non-compliance</b>                                  | Policies, guidance or operational practices may not align with current legislation and statutory guidance. | Undertake a review of relevant policies, facilities, guidance and operational practices. Seek legal advice where required.                                |
| <b>Inconsistent application across services and sites</b>    | Variation in staff and patient experience, with increased risk of complaints, disputes or challenge.       | Develop clear organisational guidance, governance arrangements and implementation plans.                                                                  |
| <b>Impact on staff wellbeing and workplace relationships</b> | Increased tensions, staff concerns, grievances or perceptions of exclusion.                                | Maintain a focus on dignity, respect and inclusion. Provide support mechanisms, engagement opportunities and clear communications.                        |
| <b>Impact on trans staff, patients and service users</b>     | Risk of discrimination claims, distress or reduced confidence in accessing services or support.            | Ensure continued compliance with protections relating to gender reassignment and complete equality and human rights assessments for any proposed changes. |
| <b>Insufficient manager knowledge and confidence</b>         | Inappropriate handling of concerns or complaints, creating organisational and individual liability risks.  | Deliver training and guidance for managers and provide clear routes to HR, equality and specialist advice.                                                |

|                                                                       |                                                                                                      |                                                                                                                                    |
|-----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <b>Failure to meet Public Sector Equality Duty (PSED) obligations</b> | Inadequate consideration of impacts on protected characteristic groups and increased challenge risk. | Complete EQIA/IAs, document evidence, options considered, stakeholder engagement and decision-making rationale.                    |
| <b>Poor communication of any changes</b>                              | Misunderstanding, misinformation, anxiety and reputational risk.                                     | Develop a clear communications plan with consistent messaging focused on legal compliance, inclusion, dignity and respect.         |
| <b>Delay in responding to emerging national guidance</b>              | Local arrangements may become inconsistent with national expectations or best practice.              | Continue to monitor Scottish Government, NHS Scotland and EHRC guidance and provide updates through appropriate governance routes. |

A balanced approach that considers legal compliance, equality, human rights, dignity, staff wellbeing and patient care will be essential.

NHS Grampian will continue to seek legal advice to ensure a clear understanding of the combined implications of the Supreme Court Judgement and the Code of Practice.

### **2.3.5 Equality and Diversity, including health inequalities**

This item is for information purposes only, so an impact assessment does not need to be applied.

Integrated Impact Assessment will be conducted in any relevant decision-making or actions covered by the CPB Commission. The CPB Commission supports the PSED in elimination of discrimination, harassment or victimisation.

### **2.3.6 Other impacts**

N/A

### **2.3.7 Communication, involvement, engagement and consultation**

N/A

### **2.3.8 Route to the Meeting**

- NHS Grampian Area Partnership Forum (20 August 2026)
- Culture Programme Board (01 September 2026)

## **2.4 Recommendation(s)**

The Board is asked to:

- Receive assurance that NHS Grampian is reviewing policies and procedures for compliance.
- Note the update and implementation of the Culture Programme Board commission on responding to the Supreme Court Ruling.
- Note that a subsequent report, setting out further progress and outcomes, will be presented to the Board at a later date.