

The Employment Equality (Sexual Orientation) Regulations Guidelines *for* Employers

SECOND EDITION



Stonewall

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From compliance to common sense

The Employment Equality (Sexual Orientation) Regulations, which became law on 1 December 2003, make it unlawful to discriminate in employment or training on grounds of sexual orientation.

For hundreds of thousands of lesbians, gay men and bisexuals, the new laws represent a huge and much welcome advance in fair treatment at work. They are now entitled to protections similar to those already provided for women, disabled and black and ethnic minority staff.

The legislation means employers now risk legal claims from staff who:

- ◆ have been treated less favourably – in, for example, recruitment, promotion, training, or dismissal, than others because they are gay or someone has assumed they are gay, or because they associate with gay people
- ◆ are disadvantaged as a group by workplace practice and policy because of their sexual orientation – for instance, they fail to qualify for certain benefits
- ◆ have been offended – either intentionally or unwittingly – by homophobic actions or comments.

The latest in a series of anti-discrimination initiatives driven by Europe, these laws have come at a time when many employers are taking the business case for diversity seriously. They know the new laws hold nothing to fear. They provide a challenge but they also provide substantial new opportunities.

Attracting and retaining the very best staff, regardless of background, is a fundamental part of business strategy for British companies that want to remain market leaders, and public sector organisations under pressure to provide world-class public services.

Stonewall has produced this guide to offer practical help and advice to employers on how to both comply with and get the best from the new laws. It provides a detailed outline of the legislation and what it will mean in practice.

Many leading organisations now realise that robust diversity policies contribute substantially to long-term competitiveness. We set out the business case for diversity and look at how effective policies help attract higher skills, motivated employees and loyal customers.

The guide also includes practical advice on overcoming the barriers to establishing a truly inclusive workplace. We offer eight key steps to making sexual orientation an everyday diversity issue alongside gender, race and disability. These practical steps are a critical part of informing, consulting and communicating the new laws to staff and line managers and persuading them to take an active part in creating an inclusive culture at work.

All the advice is based on methods already used by members of the Stonewall Diversity Champions scheme to promote fair treatment in the workplace. These Diversity Champions range from BT, Barclays, Royal Bank of Scotland and JP Morgan in the private sector to the Inland Revenue, the Home Office and Birmingham City Council in the public. They are major British employers that have one thing in common – they all want to ensure that they stay in the premier league by attracting the very best human capital.

To them equal treatment for lesbian, gay and bisexual people isn't just a question of fairness; it's a question of common sense.

Ben Summerskill
Chief Executive, Stonewall

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Ten key steps to making the law work

Throughout this guide, we use the abbreviations LGB to indicate lesbian, gay and bisexual, and LGBT to indicate lesbian, gay, bisexual and transgender. Although the new laws do not relate to transgender people, employers who demonstrate good practice in this area are often in the forefront of good practice generally.



Winning the argument

Complying with the law, motivating staff and building the right corporate image all contribute to a strong business case for diversity

Lesbians, gay men and bisexuals comprise around 6 per cent of the UK population, according to government estimates. That's roughly 3.5 million people, and many are in the workforce. The arguments for ensuring your organisation's diversity policies and practices include lesbian, gay and bisexual (LGB) people have never been stronger.

By 2011, only 18 per cent of the UK workforce will be white, male, not disabled, under 35 and heterosexual.

Many progressive employers are now recognising that they need to draw on talent from all sections of the population and create a workforce culture that embraces diversity and equality. These employers have three motivations:

- legislation** – the need to comply with an expanding range of anti-discrimination laws and avoid the escalating costs of litigation
- skills and productivity** – the need to recruit, retain and motivate the talent necessary for business growth
- reputation** – the need to show the right corporate image to an increasingly discerning population

of potential staff and customers.

These three are inter-linked. For example, an organisation that strives to create a working environment free from unlawful harassment should also reap the rewards of a loyal, well motivated, more productive workforce. At the same time, a company that is known to recruit actively from minority communities is likely to be more successful in promoting its goods to a wider market.

Legislation

On 1 December 2003 it became illegal to discriminate against LGB people at work. Employers who fail to comply with the Employment Equality (Sexual Orientation)

Regulations 2003 could end up defending their case at an employment tribunal.

The regulations cover liability for direct discrimination – where an individual is treated less favourably than another because of his or her perceived sexual orientation – and indirect discrimination – where a particular provision or practice has a disproportionate impact on LGB people. They also prohibit harassment of an LGB employee by other employees. What is more, they also provide protection to heterosexual workers who are discriminated against because they are assumed to be LGB, or because they have LGB friends or family.

A lesbian working in a large administrative centre in Glasgow, but not 'out' at work, was asked to sign a petition opposing government proposals for same-sex partnerships. She declined. Being the first person not to sign it, office debate hotted up on the issue, making the woman feel very uncomfortable at work. She eventually took three days off sick until the topic had passed over but felt unable to challenge her colleagues or to raise her concerns with her manager for fear of being 'outed'.

'It isn't only that we want to recruit the very best LGB employees in order to retain our position as a market leader. We know we won't recruit the best young heterosexual staff either if their workplace doesn't look like the wider world they now choose to inhabit.'

Frank Howells, Diversity Manager, JP MORGAN

Business Benefits

Fighting a discrimination case at an employment tribunal is a no-win situation. It's time-consuming and costly for both employer and employee and uses up valuable resources. Even if the tribunal finds in the employer's favour, any publicity about the case itself will almost certainly damage the organisation's reputation among existing and prospective workers as well as customers.

The average tribunal award for discrimination cases in 2002 was £15,500 – up 15 per cent on the previous year. However, there is no limit on the compensation a tribunal can award victims of discrimination, and it can also order damages for injury to feelings – up to £25,000 in serious cases. The total amount awarded by tribunals in cases of discrimination in 2002 was £6.41 million – 65 per cent up on 2001. The number of cases that made it to court increased significantly too.

Even settling out of court can be expensive. It may keep an organisation out of the local papers, but it will still test the loyalty of the rest of the staff.

Skills and productivity

The UK is currently estimated to be 20 per cent less productive than major competitors such as France and Germany. It is hardly surprising, therefore, that boosting

Ms Vento was a probationer constable with the West Yorkshire Police for two years. After her marriage broke down senior and fellow officers subjected her to a campaign of bullying, unfair scrutiny, unwarranted criticism of her work and sexual harassment. They thought that as a single mother she was unable to cope with the demands of the job and sought to portray her as incompetent and dishonest. Ms Vento suffered clinical depression and suicidal impulses as a result, and was eventually dismissed for alleged dishonesty and poor performance.

The tribunal found the force's criticisms of Ms Vento's performance unwarranted or unfairly exaggerated. She was eventually awarded almost £200,000.

productivity is now a key issue for employers – large and small.

Until comparatively recently, many believed this simply meant sweating assets – getting more from less. But increasingly the government and economic experts are stressing the importance of factors such as the skills base and declining levels of innovation. Organisations are realising they need to add value through recruiting, training, developing and retaining the best people.

As a result, new economy employers such as Microsoft claim that non-tangible assets, such as intellectual capital, talent, leadership and reputation, represent 90 per cent of their market value.

The late 1990s were characterised as a time of severe skill shortages, with employers and recruitment firms fighting what they called the war for talent. Both public and private sector organisations struggled to attract and hold on to people of the right calibre.

Despite the recent downturn in recruitment, these shortages do not seem to have abated. Research from Cranfield School of Management shows many employers consistently find it hard to attract candidates with the competencies – skills, abilities and behaviours – their organisations need. Over the past year, three in four employers have reported difficulties filling more than 30 per cent of their management vacancies.

'For us turnover is more than a measure of employee satisfaction or morale. Lower turnover yields cost savings and improves business performance. The benefits include lower recruitment costs and retaining skilled employees who deliver better service. We know committed employees are more likely to be motivated, creative and productive.'

Jeremy del Strother, Divisional Director, Personnel and Development, NATIONWIDE

A new generation, with different expectations from its predecessors, is forcing employers to review how they recruit, manage and remunerate their staff. The values an organisation claims to espouse and its reputation play an increasingly important part in its ability to attract and retain talent.

In one recent opinion poll, one in five undergraduates said they would not work for an 'unethical' employer. More than one in ten said they would not even consider joining a company with discriminatory practices.

Organisations are starting to understand they need to do more to become employers of choice. They must demonstrate to the people they want that they:

- ◆ are dynamic
- ◆ are prepared to invest in them
- ◆ will enable them to perform at their best
- ◆ have positive policies and will deliver on them
- ◆ are high performers in their field

Organisations that demonstrate respect for individuals have been

BT encourages members of Kaleidoscope, its LGBT network, to participate in market research for BT's marketing strategy and products. This feeds into the company policy to raise the profile of BT as an employer and preferred supplier in the eyes of the LGBT communities.

shown to have higher levels of performance and morale, and lower levels of absence. Workplace studies show these organisations create an environment of trust and openness, where people are more likely to be creative, to take risks, to develop new products and to establish new markets and new ways of working.

With skills at such a premium, holding on to expensively trained and nurtured staff has become a key priority. Every staff member who leaves an organisation because of discrimination or stress

has a potentially negative impact on its reputation as an employer – internally as well as externally. Remaining staff and potential recruits lose confidence in managers and leaders who appear to be flouting their own value statements.

As well as the opportunity cost of losing talented staff through an intolerant working environment, there are the up-front expenses of replacing them. It can cost up to 150 per cent of salary to recruit, induct and train a new member of staff. It's hardly surprising, therefore, that organisations such as the Nationwide Building Society regard staff turnover figures as a key measure of their success as employers.

And long before discrimination or harassment forces a member of staff to quit, employers may also have to bear the brunt through stress-related absence. The CBI estimates that absenteeism costs UK employers £10.2bn a year, while the Health and Safety Executive suggests that up to 30 per cent of absenteeism is stress-related.

Several of the major City of London banks – including Citigroup, JP Morgan, Credit Suisse First Boston, HSBC, Royal Bank of Scotland, Goldman Sachs and Lehman Brothers – hold regular joint meetings of their LGBT staff. The meetings address how the banks can work together to improve the employment climate for gay people working in the City.

Reputation

A reputation for discrimination can have a negative impact on an organisation's ability to attract and retain customers and clients, as well as staff. Witness the campaign against one UK high street bank because of its association with a financial backer that was well known for anti-gay views. The bank lost shareholder value overnight. The campaign was one of the factors that prompted the bank to take extensive action, including introducing a diversity audit and appointing a diversity manager.

In the private sector, robust diversity policies and practices that are seen to encompass LGB people can play an important part in attracting the pink pound. While not all LGB people have large amounts of disposable income, statistical evidence suggests it is a lucrative market for many businesses.

In 1998 Market Assessment International estimated that the UK's pink economy was worth £97 billion in income terms and that the total disposable income of lesbians, gay men and bisexuals in the UK was about £10 billion. A *Gay Times* survey published in 2000 found 80 per cent of respondents were in the ABC1 social bracket.

Bass Leisure Retail spent £1.5 million on developing a gay 'super pub' in Brighton. Operations manager Becki Davies said: 'Consumer research has shown us that Brighton is the second biggest market in the UK in terms of gay business. We felt it was an opportunity we couldn't afford to miss.'

Evidence from the US suggests that the purchasing power of many LGB consumers means that:

- 57 per cent** 'prefer to buy top of the line'
- 68 per cent** upgrade to a product's latest model
- 59 per cent** buy themselves 'whatever they want'

Significantly, LGB consumers show high levels of brand loyalty. A survey by RainbowReferrals.com in the US revealed that more than 90 per cent of lesbians and gay men would be somewhat or very likely to use a product advertised in the lesbian and gay media, especially if the brand was associated with a company that had actively promoted LGB equality. This could be through sponsorship of events such as Mardi Gras or organisations such as Stonewall.

In the public sector LGB people

have the same rights to use public services as everybody else but may not feel able to access them, or they find their specific needs have been ignored or under-resourced when they do. This can impact on the effective delivery of a huge range of services from health, education and housing to criminal justice and leisure.

Corporate social responsibility

The profitability and reputation of organisations increasingly requires them to demonstrate corporate social responsibility. A commitment to social responsibility can also draw in new sources of talent from beyond an organisation's traditional recruiting pools, and these will often include LGB people. The increased diversity that results brings innovation, and puts a business in closer touch with its wider marketplace.

So in a spectrum of ways, positioning your organisation as one that welcomes LGB customers or service users and employees, and endeavours to meet their particular needs clearly makes good sense.

'Equality for lesbian and gay people is integral to our corporate equality policies. We want to be a safe place for lesbian and gay people to work. As the largest employer in the county we also see our role as setting an example to other employers in the area.'

Sylvia Jones, Senior Education Officer, DENBIGHSHIRE COUNTY COUNCIL

Making it happen

a toolkit for success

Almost every aspect of employment policy and practice throws up specific problems in relation to LGB people. While experience of other diversity issues, such as ethnicity, gender and disability, may be useful as a starting point for introducing LGB policies, there will be many new barriers to overcome in creating a truly inclusive workplace.

This chapter introduces eight key steps to making sexual orientation an everyday diversity issue, alongside others such as gender, race and disability. They cover issues such as organisational culture, recruitment, terms and conditions, performance management and monitoring and evaluation.

At first sight, it might seem daunting, but this toolkit has been designed to enable employers to change attitudes and behaviour within their organisations. All your staff need to understand that the law has changed and

it is unacceptable for them to discriminate either directly or indirectly against any colleagues on account of their sexuality.

The toolkit should not only help you to avoid litigation but also develop best practice people policies so that you can reap the benefits of the legislation. Some of these steps outlined are essential to complying with the law and therefore urgent. For example if your selection processes are not up to scratch and you are perceived to be overlooking LGB candidates in favour of less well qualified heterosexual applicants, LGB candidates can now take their grievance to an employment tribunal.

Other steps are less urgent and will evolve over time as you build a culture of respect for all employees, regardless of their sexual orientation

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Build a culture of respect

Creating a workplace culture that genuinely values people and all their differences is a major challenge – and opportunity – facing organisations.

Recruitment, training and development, succession planning, equal opportunities policies, benefits packages – all of these aspects of people management affect LGB staff. Employers need to communicate this to their managers and ensure that they understand how to act.

Organisations that wish to promote the value and importance of diversity must provide leadership and create a climate where everyone feels safe and does their best. On a purely practical note, they must also be sure that their diversity policies specifically cover sexual orientation.

Key issues

In some organisations, diversity policies are inclusive and deal explicitly with issues of sexual orientation. In others it is still a taboo topic, or one that is not openly discussed. A major challenge is to make sexual orientation an everyday issue in the workplace, alongside ethnicity, faith, gender, disability and age.

A survey by Social and

Community Planning Research in 1995 found that 64 per cent of lesbians and gay men concealed their sexuality from some or all of their colleagues. For those who feel they have to hide their sexual orientation at work, there is the constant pressure of concealment. It also makes it very difficult for them to get support when private events affect their work.

Lesbians, gay men and bisexuals who are out and feel able to be open about their sexuality at work are often inaccurately stereotyped in ways that are damaging to their careers, for example, as being unsuitable to work with young people.

In addition, when LGB people are referred to in the workplace, it is often in terms of a stereotyped image of the young, affluent, educated gay man, rather than a diverse range of people.

Research has shown that LGB people who are out at work are vulnerable to harassment, bullying and discrimination in their careers. The 1995 Social and Community Planning Research study found that 21 per cent of respondents had been harassed at work, 4 per cent had lost their job because of their sexuality and 8 per cent said they had been refused promotion.

Action points

Provide leadership at all levels

- ◆ Your public statements should assume that a percentage of your workforce and your customers are lesbian, gay or bisexual.
- ◆ Create role models by publicising the success of any high-profile LGB people in your organisation.

IBM wants motivated people working for a world class company. We believe our continued success depends on the skills and motivation of our employees. This is reflected in IBM's basic belief in 'respect for the individual'.

Our aim is to create and sustain a working environment in which individual diversity is valued and all employees are able to contribute, grow and achieve their maximum potential.

IBM Human Resources Policy

'I work with the under-fives. Nobody at work knows I'm a lesbian. When my long-term relationship ended, I was devastated but I couldn't talk to my colleagues about it – none of them knew I had a partner in the first place. I know they would have supported me if it had been a marriage that ended, and it would have really helped. I felt so alone.'

Nursery nurse, Wiltshire

- ◆ Provide all your managers with training and development to help them create a climate in which diversity is valued.
- ◆ Barclays, IBM, the BBC and other organisations have appointed senior-level champions for LGB equality. Explore whether there is someone who could do this for your organisation. They don't have to be lesbian, gay or bisexual.

All employees at the Nationwide are encouraged to develop diversity awareness skills. They do this through a mix of formal and informal training and development.

Create a climate where everyone can be themselves and feel safe

- ◆ Think about how you show that you respect minority employees and what more you could do to publicise a message of openness, trust and equality.
- ◆ Reinforce the message to all staff that they do not need to tolerate harassment, bullying or unfair treatment of any kind. Where appropriate, mention LGB people specifically in policy statements.
- ◆ Revisit your grievance procedures and ensure there are mechanisms in place to deal effectively with any problems arising from unfair treatment.

Barclays has developed a vision of Equality & Diversity, which has been agreed and publicly signed by the executive committee. Five task forces, including one on sexual orientation, have been set up to work with business areas to remove barriers. An extensive training programme has been planned, which begins with foundation workshops led by managers throughout the company

- ◆ Make it clear that social events involving partners and children are equally open to same sex partners and their children.
- ◆ Consider other ways in which you can demonstrate your commitment to putting equality and diversity policies into practice.

Review your equality and diversity policy and strategy

- ◆ To have any meaning, your policy should be clearly linked to business or service outcomes.

In 2001, Barclays launched its 'success through inclusion' policy. All members of Barclays' executive committee signed an equality and diversity charter. Gary Hoffman, chief executive of Barclaycard, was appointed senior champion for sexual orientation.

- ◆ It must accommodate the changes in the law in 2003 and explicitly include LGB employees.
- ◆ It needs to be communicated to managers so they understand the nature and importance of issues that affect LGB employees.

Benefits

Employers who create a culture where diversity is acknowledged, and where people are truly valued, will be more successful. They will:

- ◆ become employers of choice for talented people who want to work in a progressive and ethical workplace
- ◆ retain the best people, and use their talents to the full
- ◆ increase job satisfaction and morale, and therefore productivity
- ◆ send powerful signals about being modern and forward-looking, and show a determination not to allow old-fashioned prejudice and discrimination to undermine effective performance.

Recruit and select fairly

People are a vital resource for high performing organisations. Recruiting and retaining the best people from the widest possible field is key to building competitive advantage.

Staff selection is an obvious area where unfair discrimination can occur, and has long been an issue for those concerned with race, gender and disability equality. Many organisations will already have a policy and set of procedures, plus training, in place to support those involved in recruitment and selection. These can be adapted to ensure they address the challenges LGB people often face in advancing their careers.

However, there is much more to the recruitment and selection process than appointing an individual to a job. With each job advertisement, the organisation is potentially communicating with a huge audience.

How inquirers, applicants and candidates are treated will give rise to a network of talk about the organisation. Every time an organisation appoints an LGB person, other high calibre candidates will be encouraged to apply.

The entire process is therefore a unique opportunity for an organisation to send out a message about what it values both in its staff and in its customers.

Key issues

Recruiters may have stereotyped notions of what LGB people are good at or not so good at, and these affect their decisions. Some may believe LGB people will not fit in. Others simply do not want to appoint people they know or think are LGB, especially to customer-facing roles.

Excellent potential applicants may not bother to apply for jobs in organisations they, rightly or wrongly, believe to be intolerant of LGB people. Research indicates organisations get a better field of applicants if they include positive and inclusive statements in their advertising literature, and the

material they send to applicants. A Greater Manchester Police advertising campaign targeting LGB people not only encouraged people to apply, it also sent a clear signal to other staff and the wider public about the changing culture and leadership of the force.

A key feature of the guidance that accompanies the race, gender and disability equality legislation is that selection criteria should be fair, related to the job, and applied consistently. However, the criteria are only as fair as the managers who apply them. Providing training for those involved in designing the selection process, shortlisting, interviewing and decision-making is crucial to recruiting fairly.

Netimperative is a new dotcom company employing 35 people. It operates in a highly competitive field and in some areas there are literally only a handful of people with the necessary skills to do the job. 'Without those skills, we can't function, so being able to attract the best person for the job is absolutely crucial. We simply can't afford prejudice,' said Bryan Smith, director, Netimperative

'Over the years, I've done a lot of voluntary work for a lesbian organisation. But I only put it in a job application if an employer mentions gay people in their equal opportunities policy, because otherwise you just don't know what the reaction will be at the other end. Of course, that means that some employers never get to see the full range of my experience.'

Naomi, 53

Action points

Let LGB people know they are welcome to apply

- ◆ Find out if the make-up of your workforce reflects your customer base or the communities you serve. Consider how it would help the organisation if it did.
- ◆ Think about how and where you advertise vacancies. Have you used the recruitment sections of specifically LGB media, such as *The Pink Paper*?
- ◆ Look also at the language you use. Is it unwittingly discouraging LGB people from applying?
- ◆ Recruitment advertising and literature are part of your image building work. They should include any LGB initiatives you have taken, such as extending benefits to same sex partners and establishing employee networks.
- ◆ Always include your equality and diversity policy in the information you send out to applicants.

Have clear, inclusive recruitment policies and procedures

- ◆ Adapt your recruitment and selection procedures to accommodate the requirements of the 2003 legislation on sexual orientation.
- ◆ Where possible, ask LGB staff to help you make sure policies and procedures are inclusive and effective.

JP Morgan undertook a recruitment campaign targeting LGBT university networks. This included sponsoring a gay-friendly careers booklet for Oxford University students.

- ◆ Methods used for monitoring the recruitment of other employee groups may also work for monitoring fair and equal treatment for LGB people. Modify them if necessary.

Make the recruitment process transparent

- ◆ Candidates who have encountered discrimination in the past will find it reassuring if you are open about your recruitment process.
- ◆ Keep a record of each stage of the recruitment process so that candidates and anyone else involved can see that you have dealt fairly with all applicants.
- ◆ Be ready to deal promptly with any complaints from candidates about their treatment during the selection process.

Train the decision-makers

- ◆ Interviewers and recruiters need to understand the selection criteria and apply them consistently.

- ◆ Make sure recruiters are not making unfounded assumptions based on stereotypes and prejudices about particular groups. They should also understand that prejudice may have limited a candidate's opportunities to develop in previous jobs.
- ◆ Set up a system so that staff know what to do if they think a recruiter or interviewer has made a prejudiced remark, or a decision based on sexual orientation rather than a candidate's ability to do the job.

Benefits

Employers who recruit using objective, measurable criteria will:

- ◆ have a wider choice of applicants
- ◆ minimise staff turnover and associated costs – because the right people will be appointed to the right jobs
- ◆ make the best use of the most talented people
- ◆ secure competitive advantage in areas of skills shortage
- ◆ avoid the costs of litigation.

'The interview was a sobering experience. As a 40-year-old single man, who would I bring to a product launch? Was I a member of any clubs? Where would I take a client for dinner? They never said that, as a gay man, without a wife or children, I did not fit the bill, but I certainly got the message.'

CHARTERED INSTITUTE OF PERSONNEL AND DEVELOPMENT, survey of recruitment consultants, 1996





Tackle workplace bullying and harassment

Harassment is demotivating and unlawful. It can take the form of being ignored or excluded; physically or verbally abused; outed as gay; or made the subject of jokes and offensive remarks. Extreme cases involve violence, forced resignation or unfair dismissal.

A generally hostile environment can be a form of harassment, even where actions and comments are not apparently aimed at individuals.

As harassment is under-reported, the true scale of the problem is unknown. As more and more employers tackle the issue, however, evidence is emerging of all sorts of harassment, including that of lesbians and gay men.

LGB people who are black or disabled may have experience of different kinds of harassment, and there is some evidence that lesbians face a disproportionate amount of sexual harassment at work.

Barclays has distributed a pamphlet called *Sexual Orientation to all staff*. It outlines harassment and grievance procedures, giving contact details for those wanting more information.

In a survey of university teachers, 41 per cent of lesbians reported harassment, compared with 30 per cent of heterosexual women, 27 per cent of gay men, and 19 per cent of heterosexual men. No lesbian reported that action was taken in consequence. In contrast, 57 per cent of heterosexual women suffering harassment reported this to the authorities, and 49 per cent of these reports led to action.

Key issues

Many people are frightened to complain because they believe their complaints will not be taken seriously or they will end up taking the blame. An added complication for many LGB staff is that making a complaint would force them to

come out as gay, possibly leading to further harassment.

Because most LGB employees are not completely out about their sexual orientation at work, they are particularly vulnerable to 'canteen culture' harassment - homophobic comments made in the course of conversation but without the intention of causing offence. Such comments are often made in the belief that everyone in the immediate audience will be sympathetic to them.

Action list

Explain to staff why harassing people because of their sexuality is unacceptable

- ◆ Adapt your existing harassment policy to make it LGB inclusive.
- ◆ Make specific references to harassment in your induction programme.
- ◆ Ensure that managers understand the spirit as well as the letter of the policy and are ready to support it in the way they behave towards staff.

'I am constantly ridiculed and belittled by colleagues who view it as teasing and good natured.'

Respondent to Stonewall Cymru survey 2002/03

Shirley Pearce, a lesbian, was employed as a science teacher at Mayfield Secondary School in Portsmouth from 1975. From 1992, she regularly experienced homophobic taunts and abuse by pupils. She reported this, but the abuse continued. In November 1994, Ms Pearce took sick leave, informing the school that she had become ill with stress because it was not taking effective action to protect and support her. The head teacher told her to 'grit your teeth', and when Ms Pearce returned to work the harassment began again. It was suggested that Ms Pearce either look for another job or join the supply list. Ms Pearce became sick again in May 1995 and took early retirement on health grounds a year later.

Make it easy for people to report a problem

- ◆ Bullies are often more senior than those they harass. Staff who feel that they have been harassed need several routes for making complaints, for example, through personnel or the staff association.
- ◆ Staff who complain they have been bullied for being gay may want to keep this information confidential. You should support them in this.
- ◆ Don't just breathe a sigh of relief if an employee chooses not to make a formal complaint. Assess what practical steps you can take to ensure the bullying ceases.
- ◆ Speedy and effective action will enhance your reputation for fairness

Monitor complaints and review policy

- ◆ Be prepared for an initial rise in complaints when you introduce a policy to include LGB people. You need to know who's going to investigate complaints and who's going to support the complainant.
- ◆ Managers are responsible for building a climate in which harassment and bullying are not tolerated and do not happen. They need to be trained in procedures for monitoring and reviewing incidents.
- ◆ By monitoring harassment and collecting the data you should be able to press for deeper cultural changes within your organisation.

Benefits

Organisations that tackle harassment and bullying, including that specifically directed at LGB staff:

- ◆ increase the effectiveness and productivity of staff, through reduced sick leave, improved retention and greater commitment
- ◆ demonstrate leadership in dealing with challenging issues
- ◆ minimise the likelihood of damaging litigation and bad publicity.

Review terms and conditions

Benefits and conditions are important motivators for employees. Yet LGB people do not always enjoy terms and conditions of employment equal to those of their heterosexual colleagues.

Key issues

At present, anyone with a same-sex partner is likely to be excluded from at least some workplace benefits. Although pensions are at the top of the list, other types of benefit that may be affected include leave arrangements, health insurance, travel concessions for employees and their partners, and relocation allowances.

A report based on a survey of lesbian, gay and bisexual union members by the TUC found that next to harassment, the most frequent discrimination took the

Ford has reviewed its policy areas relating to sexual orientation. Changes made include pensions, medical benefits, 12 months maternity cover and provision of partner insurance for company cars.

HM Customs and Excise has rewritten its paternity leave policy so that lesbians are entitled to paid leave if their partner has a baby.

form of denial of benefits enjoyed by heterosexual colleagues. The report 'Straight Up! Why the law should protect lesbian and gay workers', found one of the most common issues was unequal treatment by a pension scheme.

Pension schemes that pay dependants' benefits often restrict payment to married partners or heterosexual cohabitants, even though Inland Revenue guidance rules state that a same sex partner may qualify for a survivor's pension if financially dependent on the deceased employee. However, payouts are usually at the discretion of the pension trustees.

Meanwhile, two in five life insurance providers refuse to provide insurance to same-sex couples.

Leave, for bereavement or family emergencies, is designed to help employees balance their work and home commitments so that they can be more effective in the long term. A policy that excludes leave for same-sex partners can cause considerable personal trauma and lead to discrimination claims.

Action points

Make sure your policies are explicitly inclusive

◆ A menu of benefits will acknowledge the different requirements and lifestyles of all employees. Many employers already recognise this as good practice when it comes to recruiting, retaining and motivating key staff.

◆ Your policies should state that the following are available to same-sex partners or nominees of the employee's choice:

- ◇ bereavement leave
- ◇ parental leave and adoptive parental leave
- ◇ relocation allowances
- ◇ carer's leave
- ◇ travel benefits
- ◇ discounts on the company's or other services
- ◇ private healthcare.

Make your communications

American Express operates a group medical aid scheme where eligible employees are automatically covered for single cover at no cost. Employees can purchase additional cover for partners, including same-sex partners, and/or dependent children.

inclusive

- ◆ Include same-sex employees in any oral or written examples you use to explain to staff the benefits of your reward package.
- ◆ People who are responsible for giving staff information about their terms and conditions need to:
 - ◇ tell inquirers the policies extend to same-sex partners or other nominees if applicable
 - ◇ talk about partners or nominees rather than husbands, wives and spouses
 - ◇ understand the need for confidentiality in relation to nominated beneficiaries of perks and policies.

Choose the best suppliers

- ◆ Use a pension company that is committed to equal treatment of same-sex partners. Norwich Union, Scottish Widows and Standard Life are among those who have pledged this.
- ◆ Seek advice from an independent financial adviser specialising in same-sex relationships on life insurance and health insurance.

Ensuring your terms and conditions are fair to LGB people means:

- ◆ All employees are rewarded fairly for their contribution
- ◆ Employers get more value from their benefits package by maximising staff motivation from their reward package
- ◆ The organisation becomes an employer of choice, helping to attract the best recruits
- ◆ Focusing on best practice makes compliance with legislation more likely.

Benefits

Manage performance fairly

Managing people properly, openly and with respect is increasingly being linked with high performance in businesses. LGB organisations such as Stonewall have ample evidence that LGB people are not always treated fairly at work, for example by being passed over for promotion, disciplined unfairly or even dismissed for no good reason. This is now illegal.

Key issues

Organisations have many different ways of managing performance, from informal chats to elaborate systems of appraisal by stakeholders, customers and peers as well as managers.

However, people often have stereotyped notions of what

LGB people are good or not so good at, and therefore which jobs or assignments are suitable for them. For example, gay men are often clustered in caring or artistic roles while 'out' lesbians may be considered aggressive and therefore unsuitable for jobs requiring tact.

Both lesbians and gay men (but especially gay men) are wrongly considered by some to be unsuitable to work with children. In addition, LGB people can be subject to unspoken assumptions that they cannot be trusted to represent the organisation to the public or to high-profile customers.

LGB people often find they are described as not being team players. This can arise because they are unable to be entirely open about their personal or social lives at work.

In addition, managers can fail to spot homophobia and its effects on LGB people's performance. They may not notice that they are disregarded by colleagues or badly treated by customers, let alone harassed by neighbours or excluded by their families in ways that affect their work.

Action points

Create the right climate

- ◆ All the information you give to employees should reinforce the message that decisions about recruitment, promotion, rewards and redundancy are based on merit and competence.
- ◆ Develop sets of competencies to cover the skills and abilities different roles in the organisation require. You will then build a culture based on how people perform rather than who they are and where they come from.
- ◆ Understanding diversity and equal opportunities issues should be built into your management development. This will provide managers with the skills to use their discretion wisely and fairly. Diversity awareness could become one of their key competencies.

Since 2000, the **Scottish Police Service** has been implementing the National Equal Opportunities Training Scheme (NEOTS), which provides practical diversity management skills and understanding to uniformed and civilian staff at all levels. Recognition of the need for sensitivity around sexual orientation has led to the use of 'interfaces' – real people sharing their lives and experiences with trainees. These personal interactions have contributed significantly to reducing stereotypical assumptions and prejudice and helped trainees understand the reality of people's lives.

'I have been regarded as 'unsafe' and cannot get work as a midwife in South Wales because all the heads of midwifery know I am gay'

Respondent to Stonewall Cymru survey 2002-03

Diversity Toolkit

Develop formal performance management systems

- ◆ Performance management systems should cover the way you review employees' performance, how you help them develop their skills and access to training and promotion.
- ◆ By using a system based on competencies for each job, you will enable managers to make fair and consistent decisions based solely on employees' performance.
- ◆ All employees should know how the performance management system works. Managers especially need to be able to identify bias in the way they make judgements about people. Training should explicitly include:
 - ◇ examples of the way homophobia can be disguised
 - ◇ common misconceptions that are applied to LGB people, particularly with reference to different types of work
 - ◇ examples of the ways in which managers' discretion might disadvantage people from various groups, including LGB people.

The competencies for staff at the **Office of the Deputy Prime Minister** include:

- ◆ treats all colleagues and contacts with respect and appreciation regardless of age, gender, sexual orientation, marital status, race, colour, nationality or ethnic origin, disability, religious belief, social class or grade
- ◆ contributes to an environment in which difference and diversity are respected.

Monitor and review policies

- ◆ Good performance management practices will include some form of monitoring so employers can review whether or not:
 - ◇ best practice procedures were followed
 - ◇ decisions were based on firm evidence
 - ◇ penalties and rewards were proportionate to performance.

Benefits

A performance management process that addresses LGB discrimination will:

- ◆ enable LGB staff and their managers to address the full range of issues that may affect their performance
- ◆ provide a model of good practice for addressing all aspects of discrimination
- ◆ enable organisations to maximise the performance of all staff.

Establish employee networks

Employee networks – forums for staff who share one or more aspects of their identity – are becoming more popular. Increasingly, they are funded and promoted by employers, rather than operating informally, as employers appreciate the benefits they can bring to the whole organisation.

Networks for women and black staff have proved successful across the public, private and voluntary sectors and provide useful lessons on how best to establish a network for LGB employees, as do existing LGB networks.

Establishing employee networks demonstrates your commitment to diversity in the workplace. It tells staff that the organisation values all its people, and recognises the need to bring together staff who may feel

Greater Manchester Police's focus group for LGB staff offers a confidential voicemail to make contact and receive information. The group is part of the force's Equality Issues Group, chaired by the Assistant Chief Constable.

Gay and Lesbian Employees at Morgan (GLEAM), has had a great deal of involvement in the firm's recruitment efforts and the extension of workplace benefits to same-sex partners. Since the merger between JP Morgan and Chase in January 2001, the network has been known as Pride and includes bisexual and transgender staff.

isolated or vulnerable. Networks can provide a safer and more supportive working environment.

In addition it can give the employer a valuable mechanism for consulting LGB employees about employment practices and customer service.

Key issues

Many workplace cultures assume everyone is heterosexual. Due to fear of prejudice, most LGB employees are not completely out about their sexual orientation to colleagues and many believe they are alone in their workplace. In larger organisations, LGB employees may be based in different offices and regions.

This can make it difficult for LGB employees to identify each other, create informal connections, find support and address any difficulties. However, LGB employees may wish to participate in a network without

being outed as gay as a result. They need to be confident that joining or contacting a network is safe.

Action points

Establish the network in consultation with LGB staff

- ◆ Contact and consultation with LGB staff can be managed in several ways, including:
 - ◇ anonymous surveys
 - ◇ consultation through staff associations or trade unions
 - ◇ using a third party organisation such as Stonewall.
- ◆ Discuss a range of practical issues with staff, such as:
 - ◇ What role should the network have? It could be it social gathering, support group or it could have more formal input into employment policies, or product and service development.
 - ◇ When and where will meetings take place? Should they be regional or national, during

'Until the network was set up, I thought I was the only lesbian working in the bank.'

Female bank worker, Lincolnshire

work or leisure time?

- ◇ Who can attend network meetings? Will it be LGB staff only or can other staff participate?
- ◇ If you are a unionised organisation, should you involve the trade union?

Connect the network to the rest of the organisation and other networks

- ◆ Consider the network's purpose and responsibilities.
- ◆ Make sure the network is adequately resourced. It needs sufficient time and money to fulfil its aims and objectives.
- ◆ Think about how you can link your LGB network with other employee groups. Together they can deal with common issues and challenges that emerge.

Ensure leaders of the organisation promote the network

- ◆ Ask high-profile, senior managers to champion the network. They don't have to be lesbian, gay or bisexual, but they will need to buy into the idea of a LGB network. By

Barclays launched its LGBT employee support network, Spectrum, in January 2002. Over 170 employees travelled from all over the country to attend the launch event, which was held in central London. Travel costs for staff who attended were paid in exactly the same way they would have been had staff attended a meeting of another employee network.

talking confidently and comfortably about LGB issues, they can make clear this is a business matter, not a taboo or private issue.

- ◆ Be prepared for negative reactions from other staff who may feel left out. You must be able to explain how the network benefits the whole organisation.
- ◆ Provide a range of ways for staff to communicate with the network, guaranteeing confidentiality or anonymity if required.

Publicise the network both internally and externally

- ◆ Make sure all staff know about the network, why it exists, who can join and how. If you have your senior team behind the idea, then make sure staff know that too.

- ◆ Communicate its successes to all staff.
- ◆ Don't forget to publicise the network externally, for example, in the HR and professional press, LGB titles such as *The Pink Paper* and trade union publications.

Monitor and review the network

- ◆ Having established some objectives for the network, work out how you are going to measure its performance.
- ◆ Don't ignore the rest of the workforce – monitor their perceptions of the network and its value to the organisation.

Benefits

An LGB employee network can:

- ◆ challenge the invisibility of LGB staff and issues
- ◆ give LGB staff a forum for sharing experiences
- ◆ allow organisations to tap into the specific experience and knowledge of LGB staff
- ◆ help LGB staff to come out and other employees to appreciate the diversity of the organisation.

Birmingham City Council held several informal meetings between LGBT employees and staff from the council's Equalities Unit. This was part of its strategy to develop a corporate approach to sexual orientation issues. The meetings, attended by a Stonewall representative, were used to establish an LGBT employee network for council staff.

Deliver to your customers

LGB people are likely to be consumers of your goods and services as well as your employees. They deserve to be listened to, respected and offered a fair deal, along with everyone else.

Key issues

The last 15 years have seen an increase in services aimed specifically at the LGB community including leisure, household services, legal and financial services.

Many of these are provided by LGB-owned companies because LGB people still do not always feel confident of getting a good service from mainstream companies. Many members of the LGB community will support companies they perceive as responsive to their needs.

There are also many public services that provide LGB people with a more limited choice. A survey reported in *Nursing Times* (1994) found that 10 per cent of nurses believed gay men with HIV 'deserved it'. Ten per cent were 'less tolerant' of gay men.

Research by Beyond Barriers into the healthcare needs of LGBT people in Scotland found that more than a third had not even

declared their sexual orientation or gender identity to their GPs.

Action points

Show you recognise your LGB customers and service users

- ◆ Revisit the public statements you make about your goods and services to ensure they recognise the diversity of the people who use your services.

- ◆ Advertising counts. Images used in publicity materials send a powerful message, so use same-sex couples if you can.

Train customer-facing staff

- ◆ Customer service training should deal explicitly with the fact that a proportion of customers or service users will be LGB.

- ◆ Staff should be aware of the specific needs of LGB customers and service users.

- ◆ They should also be schooled to ask questions in a way that does not assume heterosexuality.

Consult your customers

- ◆ Encourage LGB customers or service users to make their requirements known.
- ◆ Monitor how members of the LGB communities perceive your goods and services.

Benefits

Organisations that address the needs of LGB customers and service users will:

- ◆ attract the full range of potential customers, including groups with high levels of disposable income
- ◆ develop consultation mechanisms that can be used with other customer groups
- ◆ create a modern and positive image of themselves.

In its equality audit, **NHS Wales** asks NHS Trusts whether they monitor the experiences of different employee and patient groups, including lesbian and gay employees and patients. The audit provides a much clearer and accurate picture of how committed the organisation is to promoting equality in respect of staff and service users and acts as a basis for further action to address any mistreatment.

'Age Concern is committed to helping all older people lead a more fulfilling later life.

Older people are a diverse group and lesbians and gay men are part of that diversity.'

Gordon Lishman, Director General, AGE CONCERN ENGLAND



Monitor and evaluate

Monitoring and evaluation are central to ensuring any activity is successful. They are the means of checking whether an organisation's diversity policy is being implemented effectively. They provide valuable management data, which can assist the organisation in making the right strategic and operational decisions to ensure it employs and retains a skilled and diverse workforce.

Monitoring and evaluation can show whether LGB employees:

- ◇ are employed in numbers that reflect the local/national population
- ◇ apply for promotion at the same rate as all other employees
- ◇ are recruited or selected for training in proportionate numbers
- ◇ are being harassed or bullied at work because of their sexuality
- ◇ are concentrated in certain jobs, sections or departments
- ◇ think the organisation's procedures and culture are supportive.

However, there are unique challenges in monitoring the sexuality of employees and job applicants sensitively.

Key issues

Under-declaration is a constant problem with monitoring, and inaccurate figures may lead to inappropriate decisions. Many LGB employees and job applicants will not feel safe declaring their sexuality.

Because most LGB people are thought not to be out about their sexual orientation to everyone they work with, data on the extent to which individuals are out is as important as that on sexual orientation itself.

Forms should avoid the suggestion that heterosexuality is the norm and that being lesbian, gay or bisexual is deviant or different from the norm.

People of different generations may use different language to define their sexuality. For example, some older people may define themselves as homosexual rather than gay or lesbian, so it may be helpful to provide alternative wording. Some women may define themselves only as lesbian; other women only as gay.

Creating a safe environment in the workplace will enable more people to be open about their sexual orientation but employers should not force people to disclose this information. Monitoring on sexual orientation should provide an option for people to state that they prefer not to answer a particular question.

London Fire Brigade now includes a question on sexuality and faith in its annual staff census. The preamble to the question states: 'We want to collect this information to find out whether there are any particular minority needs within our workforce but you don't have to complete it if you don't want to.' The question concerning sexuality asks whether employees are out at work as bisexual, lesbian, gay or transgender.

'In many organisations, what does not get monitored does not matter.'

Equal Opportunities Review, 1999

Being transgender is not an issue of sexuality but one of gender. Guidance on the 2001 National Census stated that transgender people could tick the gender they felt described them, irrespective of the sex on their birth certificate. It may therefore be more inclusive to use the word 'gender' rather than 'sex' on forms.

Action points

Encourage full participation to ensure accurate monitoring

- ◆ Reassure LGB people it is safe to provide information by explaining in your monitoring forms or questions why you need the information and how it will be stored and kept confidential.
- ◆ Communicate the results of surveys and actions you will take as a result. Employees switch off if they give information but nothing seems to happen.
- ◆ It could be helpful to know whether someone is 'out' as LGB, as well as simply LGB.

The Inland Revenue now includes sexual orientation monitoring as part of its staff survey. This is part of an all-round approach to diversity and equality, including all aspects of organisational life from customer service to recruitment.

Decide what you want to monitor

- ◆ You may want to take a snapshot of how many LGB people are currently in the organisation, or perhaps you want specific information on the experiences of those employees; or both.
- ◆ You might choose to carry out a large-scale, anonymous survey or focus on specific areas such as harassment.
- ◆ Ideally the data you gather should be good enough to use as a benchmark for improvement.

- ◆ You could start by targeting surveys at specific groups of people – for example, job applicants, employees, customers, or clients complaining of harassment.

Use data from external sources

Surveys carried out in organisations similar to yours might serve as proxy data for your organisation, if you have none available.

Benefits

Organisations that monitor effectively:

- ◆ can measure the success of specific initiatives
- ◆ send a message that their LGB employees are valued
- ◆ can identify and communicate improvements in the position of LGB employees.

As part of its commitment to a robust equal opportunities policy the **Scottish Parliament** has introduced monitoring on sexual orientation and gender identity alongside other personal characteristics. Clear communication explained why such data was needed and how it would be used.



The Law in Detail

The Employment Equality (Sexual Orientation) Regulations make it unlawful to discriminate in employment or training on grounds of sexual orientation. This is a practical guide to what the new legislation means.

Definitions

Everyone has a sexual orientation and a gender, but these terms are sometimes confused.

Sexual orientation describes who we are sexually attracted to.

We may be:

Heterosexual / straight: attracted to others of the opposite gender

Lesbian (women) gay (men): attracted to others of the same gender

Bisexual: attracted to others of either the opposite or the same gender.

Gender describes our identity as a woman or a man. For most people, this coincides with the biological sex ascribed at birth, and how others perceive them. For transgender people, their internal sense of identity is different from the sex ascribed at birth and how others perceive them. Because gender and sexuality are not the same thing, someone who is transgender may be straight, lesbian, gay or bisexual.

Transgender people are already protected under the Sex Discrimination Act Regulations of 1999.

A transgender person is said to be going through transition when they move from living as a member of their assigned gender to living in their 'true' gender. They may or may not choose to have hormone treatment and/or surgery as part of this.

What does the legislation cover?

The new regulations apply to all aspects of employment and training, including recruitment, promotion, terms and conditions (including pay) and dismissals.

It defines three types of discrimination: direct, indirect and harassment.

Direct discrimination is where one person is treated less favourably than another person is treated, has been treated or would be treated in a comparable situation on grounds of sexual orientation.

Indirect discrimination is where a policy or practice is applied which disadvantages people of a particular sexual orientation unless it can be objectively justified. It is defined more broadly in these regulations than in current race discrimination law and there is no requirement to demonstrate the disadvantages through statistics.

An example of indirect discrimination would be one which gave preference to married people in appointment or promotion and therefore excludes people with same-sex partners

Harassment is defined as unwanted conduct which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

What does sexual orientation mean?

Regulation 2(1) defines sexual orientation as meaning a sexual orientation towards 'persons of the same sex, persons of the opposite sex, or persons of the same sex and of the opposite sex'. This means that it is unlawful to discriminate at work against people who are lesbian or gay, heterosexual, or bisexual.

The regulations cover not only how people 'are', but the conduct they display. It will be up to employers to regulate the conduct of their employees while on duty, provided that any such regulation is reasonable and even-handed.

For example, take a case where

two shop workers of the same sex are disciplined for holding hands in view of the customers. An employer can no longer argue that it is worried what the customers will think if workers are seen to be gay. That would obviously be discrimination.

The defence would have to be that any two workers holding hands in these circumstances would have been treated in the same way. If, however, the workers can persuade an employment tribunal that an opposite sex couple would have been treated differently (or was treated differently), the tribunal would be bound to conclude that this was sexual orientation discrimination.

What is direct discrimination?

Regulation 3(1)(a) defines direct discrimination as occurring where a person is treated less favourably on grounds of sexual orientation.

For example it is unlawful to decide not to employ someone, to dismiss them, refuse to promote them, deny them training, give them adverse terms and conditions or deny them benefits available to others of a different sexual

orientation because they are or thought to be lesbian, bisexual or gay.

Direct discrimination also covers discrimination on the grounds of perceived sexual orientation, whether the perception is correct or not.

In this case, applicants will not need to establish that they are gay to bring a complaint. If someone has assumed them to be gay and discriminated against them as a consequence, that will suffice.

The wording also covers discrimination by association. So words such as 'Why are you so friendly with that poof?' could constitute harassment on grounds of sexual orientation, even if the person they are speaking to is heterosexual.

What is indirect discrimination?

Regulation 3(1)(b) prohibits indirect discrimination. This is where an organisation has employment rules, selection criteria, policies and other practices in place which put people of a particular sexual orientation, including the person who complains, at a particular disadvantage when compared with others.

Indirect discrimination is unlawful whether it is intentional or not. However, in contrast to direct discrimination, indirect discrimination is not unlawful if it can be shown to be justified as a proportionate means of achieving a real business need.

Any preferential treatment for married people in recruitment, promotion or transfers is likely to attract an indirect discrimination claim. Such treatment is bound to put lesbians and gay men at a disadvantage since they cannot legally get married (except to people they have no interest in marrying).

Indirect discrimination claims could arise from benefits relating to children. Lesbians and gay men can and do have children (by choice, from previous heterosexual relationships, by co-parenting or step-parenting, or by fostering, adoption or guardianship).

However statistically they are much less likely to have children than heterosexuals. Any benefits applying only to employees with children, for example free workplace crèches, or nursery vouchers, could be challenged as indirect sexual orientation discrimination. This would be subject to the defence of justification

How will the regulations affect harassment claims?

Harassment on grounds of sexual orientation is likely to be by far the most common type of claim brought under the new legislation and is prohibited by Regulation 5.

Harassment is defined as conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Regulation 5(2) provides that a person's conduct will be seen to have these effects if 'having regard to all the circumstances, including in particular the perception of [the complainant], it should reasonably be considered as having that effect.'

Is unintentional harassment outlawed?

The fact that many lesbians and gay men conceal their sexual orientation, often for fear of prejudice, renders them particularly vulnerable to unwitting harassment. People can often make anti-gay remarks on the mistaken assumption that everyone present is heterosexual.

The wording of Regulation 5 makes it clear that lack of intention to offend is no defence. If the conduct has the purpose or effect of violating a person's dignity, or creating an intimidating or offensive environment, and it is reasonable for the complainant to take offence, then it is harassment. Ignorance is no excuse.

Organisations may be held responsible for the actions of their staff as well as their staff being individually responsible.

Are there any circumstances where employers can discriminate?

There are three main exceptions where discrimination on grounds of sexual orientation may be permitted, one involving benefits for married couples and two involving occupational requirements.

Benefits for married couples

Pension schemes that provide financial benefits to a surviving spouse are the most common example of these benefits. Regulation 25 expressly excludes from the discrimination legislation anything that prevents or restricts access to a benefit by reference to marital status. This means that where benefits specify 'married' partners or spouses then they do not have to be extended to cover unmarried partners.

This will change when the Civil Partnership Act 2004 is implemented in late 2005/early 2006. Regulation 25 will be amended so that its effect will be that all pension schemes, whether occupational or private, will be obliged to provide survivor partner pensions to couples who choose to register their partnership, as they currently do for spouses. This parity of treatment between civil partnerships and spouses will also apply to other employment-related benefits.

However, the Regulations make it unlawful for an employer to provide employment-related benefits to unmarried opposite-sex partners but deny them to same-sex partners.

Particular occupational requirements

Regulation 7 provides two kinds of exception, where sexual orientation is 'a genuine and determining occupational requirement' and in the case of 'employment for purposes of an organised religion'.

Regulation 7(1) sets out the scope of these exceptions. In general, where either exception applies, it permits discrimination in refusing to appoint, promote or transfer people of a particular sexual orientation to a particular position, or in dismissing them from that position because of their sexual orientation.

But if such people are already employed (whether the employer realises it or not) then unless and until they are dismissed, the exceptions do not allow them to be employed on less favourable terms than others for example, paid less, harassed, or victimised.

Regulation 7(2) applies where 'having regard to the nature of the employment or the context in which it is carried out... being of a particular sexual orientation is a genuine and determining occupational requirement'. It must also be 'proportionate' to apply that requirement.

It remains to be seen in what circumstances an employer may succeed in relying on the regulation 7(2) exception. For example, the proposition that heterosexuality was a genuine occupational requirement for serving in the armed forces was robustly rejected by the European Court of Human Rights and the ban on lesbian and gay people was overturned, after a case taken by Stonewall.

Regulation 7(3) permits 'organised religion' employers to apply a requirement relating to sexual orientation 'so as to comply with the doctrines of the religion', or 'to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers'.

The High Court has agreed with the government and ruled that the exception in regulation 7(3) requires a very high standard to apply and is very narrow in its scope. It would not cover, for example, teachers in a faith school as their sexual orientation would be of no relevance to their job. The exact limits of the exception will no doubt have to be tested in more detail by employment tribunals or the courts.



Diversity in action

Sample policy

Nationwide Building Society

Nationwide and the Nationwide Group Staff Union (NGSU) are committed to promoting a supportive and inclusive culture for all our employees, members and third party business partners. By integrating individual strengths, Nationwide will maximise efficiency and creativity, put members first and deliver greater member value.

As an employee of Nationwide you can expect;

- ◆ To be treated fairly and without discrimination during your employment with Nationwide, commencing with the recruitment process, and having access to secondments and promotions based on merit.
- ◆ To be fairly appraised and rewarded for your personal contribution to the business, taking into account internal and external comparisons and affordability.
- ◆ To work in a healthy and safe environment free from hazards.

- ◆ To access opportunities for training and development to enable you to develop your full potential.
- ◆ To be supported in balancing your work and home life commitments and to have your request considered objectively in line with business needs.
- ◆ To be treated with dignity and respect in a fair and consistent manner in an environment where inappropriate behaviour is not acceptable.

Nationwide and the NGSU are committed to promoting equality for all. If you believe you have been subject to discrimination in employment which is in direct conflict with our commitment to equality of opportunity, you should consider raising this with your line manager or trying to resolve it yourself. Alternatively, consider registering a complaint through the agreed grievance procedure.

As an employee of Nationwide you also have a responsibility to treat others with dignity and respect. If you have been found to have acted in a deliberately discriminatory manner, appropriate disciplinary procedures will apply.

Nationwide is committed to monitoring the effectiveness of its diversity policy through the Diversity and Equality of Opportunity Committee (DEOC). The DEOC is led by the deputy chief executive officer endorsed by the Board, and comprises executive managers/diversity champions drawn from across the business and the NGSU.

Nationwide supports its diversity policy by providing further information to staff through its staff manual and a range of sites on the company Intranet. These include sites covering training and development, work-life balance and pay and benefits.

Stonewall Diversity Champions

Promoting diversity in the workplace

The Stonewall Diversity Champions programme is the UK's leading good practice forum on sexual orientation issues in the workplace. It provides advice and support to major organisations in the private and public sectors, which between them employ more than two million people.

The programme enables employers to network with senior staff, share good practice, develop new ideas, access the latest thinking and knowledge, gain advice on specific organisational initiatives and promote diversity in the workplace. Members range from the Department of Trade and Industry, to Victim Support, from IBM to Shell and from Ford to Goldman Sachs. Further consultancy and support can be provided as appropriate.

To contact
Stonewall Diversity Champions
telephone 020 7881 9440 or e-mail
diversitychampions@stonewall.org.uk

What employers say about Stonewall Diversity Champions.

Larry Hirst

Country general manager – *IBM (UK) and Ireland*

'I greatly value IBM's participation in the Diversity Champions programme. At IBM

we employ the best people irrespective of religion, gender, sexual orientation, race, age or disability. Working with Stonewall enables us to share and learn best practice from others and to ensure IBM is an inclusive and positive company in our dealings with employees and customers alike.'

Tony Sleeman

Senior diversity champion – *Inland Revenue*

'I am delighted that Inland Revenue is part of the Stonewall Diversity Champions programme. Attitudes towards people who identify as lesbian, gay or bisexual present a significant and fundamental challenge in the battle for inclusiveness so it's really exciting to be part of such a positive and innovative venture.'

Gary Hoffman

Chief executive – *Barclaycard*

'Barclays has deliberately put sexual orientation at the heart of its diversity strategy, on an equal footing with issues such as gender, race, age and disability. It's remarkable to see what this can do for an organisation in terms of openness and a renewed sense of pride in being part of a company where each and every individual counts.'

Dave Wilson

Head of employment philosophy – *BT*

'Becoming a Diversity Champion demonstrates to our employees, customers and shareholders that BT values difference and that we are prepared to make a public commitment to working with the best to further develop BT as a diverse and equal employer, supplier and business partner.'

James Crosby

Chief executive – *HBOS*

'We're proud to be part of the Diversity Champions programme and will work with Stonewall to ensure that we continue to treat all colleagues and customers fairly and with respect, while at the same time providing them with first-class products and services.'

Contacts

Department of Trade & Industry

Enquiry Unit
Phone: 020 7215 5000
Minicom: 020 7215 6740
www.dti.gov.uk

Advisory, Conciliation and Arbitration Service (ACAS)

London Office:
Phone: 020 7210 3613
Helpline: 08457 47 47 47
Minicom: 08456 06 16 00
www.acas.org.uk

Stonewall

Phone: 020 7881 9440
Minicom: 020 7881 9996
E-mail: info@stonewall.org.uk
www.stonewall.org.uk

TUC

Know Your Rights Line
Phone: 0870 600 4882

SCOTLAND

Advisory, Conciliation and Arbitration Service (ACAS)

Phone: 0141 248 1400
Helpline 08457 47 47 47
www.acas.org.uk

Stonewall Scotland

Phone: 0141 204 0746
Email: scotland@stonewall.org.uk
www.stonewall.org.uk

Employment Tribunal Service Scotland

Phone: 0141 204 0730
Email: glasgowet@ets.gsi.gov.uk

Scottish Employment Rights Network

0131 556 3006

WALES

Advisory, Conciliation and Arbitration Service (ACAS)

Phone: 02920 76 2 636
Helpline: 08457 474747
www.acas.org.uk

Stonewall Cymru

Phone: 02920 237 744
E-mail: cymru@stonewall.org.uk
www.stonewall.org.uk

Diversity Checklist

It is now illegal to discriminate on the grounds of sexual orientation. Here are ten key action points to help make the regulations work in practice.

1. Understand the law

The Employment Equality (Sexual Orientation) Regulations, became law on 1 December 2003, and make it unlawful to discriminate in employment or training on grounds of sexual orientation. Lesbians, gay men and bisexuals, are now entitled to protections similar to those already provided for women, disabled and black and ethnic minority staff.

2. Act now

Make sure your policies and practices comply with the regulations. Employers now risk legal claims from staff who have been treated less favourably in, for example, recruitment, promotion, training, or dismissal; are disadvantaged as a group by workplace practice and policy because of their sexual orientation; or have been offended – either intentionally or unwittingly – by homophobic actions or comments.

3. Communicate the changes

Explaining the new laws to staff and line managers is critical. Make sure everyone understands that LGB staff are covered by discrimination legislation and knows what they must do to comply with the regulations.

4. Make the business case for diversity

Robust diversity policies contribute substantially to long-term competitiveness, attract higher skills, motivated employees and loyal customers. More organisations are also making the link between how they treat existing and potential employees and how they are perceived by customers. Persuade colleagues to see diversity issues as an opportunity not a threat.

5. Build a culture of respect

Up to two thirds of lesbians and gay men may conceal their sexuality from colleagues. They often find it difficult to get support when private events affect their work. Work to create an environment where LGB people can feel safe and do their best. Make equal treatment for LGB people both a question of fairness and a question of common sense.

6. Recruit fairly

Recruiters often have stereotyped notions of what LGB people are good at or not so good at, and these affect their decisions. They may believe LGB people will not fit in. Ensure that recruiters understand fair selection criteria and apply them consistently.

7. Tackle harassment and bullying

Often LGB people who have been harassed will not want to complain because it would force them to come out as gay. Make LGB staff

feel confident about using your procedures even if it would mean having to reveal their sexual orientation.

8. Review terms and conditions

Anyone with a same-sex partner is likely to be excluded from at least some workplace terms and conditions. Review key benefits such as pensions and insurance cover, and ensure your policies explicitly state that benefits such as parental leave, relocation allowances and travel benefits are available to same-sex partners or nominees of the employee's choice.

9. Manage performance fairly

Ensure that everyone in your organisation makes decisions based only on merit and competence. LGB people are sometimes passed over for promotion, disciplined unfairly or even dismissed for no good reason. They often find they are described as not being team players, simply because they are unable to be entirely open about their personal or social lives.

10. Monitor and evaluate your policies and practices

Monitoring is essential to check whether unfair discrimination is going on and whether an organisation's diversity policy is working in practice. Think about how you will reassure LGB people that it is safe to provide information for monitoring purposes.



Design: *Hart Design*

Photography: *Michael Cheetham*

Editing and Production: *Working Week Communications*

Making it happen could not have been written without Equality Works www.equalityworks.co.uk

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We are also grateful to the following for their significant contributions to producing this guide: B&Q, Barclays, Barnardos (North West), Cabinet Office, Credit Suisse, Department of Health, Esporta, Hackney Community College, HM Customs and Excise, IBM, JP Morgan, Levenes Solicitors, London Borough of Enfield, London Fire Service, Manchester City Council, Nationwide, Novas Ouvertures Group, NUT.

Ros Brett, Jan Bridget, Olivette Cole-Wilson, Chris Gildersleeve, Ali Harris, Katie Hathaway, Kirsten Hearn, Linda Kelly, Linda Jenkins, Juris Lavrikovs, Paul Martin, Helen Marsh, Emily Myers, Femi Otitoju, Sue Sanders, Maria Scordialos, Marianna Shapland, Clive Taylor, Stephen Whittle, Elaine Willis.

Consortium of LGB Voluntary and Community Organisations, LAGER, London Lesbian and Gay Switchboard, Naz Project, PACE, Regard, TUC.

The Employment Equality (Sexual Orientation) Regulations *Guidelines for Employers*



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