

SEXUAL ORIENTATION EMPLOYER HANDBOOK

THIRD EDITION

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From compliance to common sense

In recent years there have been long overdue legislative moves to afford lesbian and gay staff equal treatment with their straight colleagues at work. Stonewall led the campaign for this legislation and welcomed its introduction.

The Employment Equality (Sexual Orientation) Regulations became law on 1 December 2003 and made it unlawful to discriminate in employment or training on grounds of sexual orientation. This was a huge and welcome advance in fair treatment for the 1.7 million lesbian, gay and bisexual people in the UK workplace. It entitled them 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 Civil Partnership Act, which took effect in December 2005, affords lesbian and gay people exactly the same package of rights and responsibilities that heterosexual people can derive from marriage. Employers are now required to treat staff who are married or in civil partnerships in exactly the same way.

The Sexual Orientation Regulations introduced as a consequence of the Equality Act 2006 provide robust protections to gay people against discrimination in the provision of ‘goods, facilities and services’, essentially almost any activity in which either business or public providers are engaged.

However, Stonewall views new legislation as the beginning of necessary cultural change, rather than an end in itself. We’ve produced this Employer Handbook because we believe in working with employers to move beyond mere legislative compliance in order to derive real organisational benefit from diversity.

New laws hold nothing to fear. They provide a challenge but they also afford substantial new opportunities. This guide offers 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 current legislation and what it means in practice. Using this handbook will help you build reputation, improve recruitment and boost productivity amongst your lesbian and gay staff as well as help you mitigate risk going forwards as you attract more motivated employees and more loyal customers.

The guide also includes practical advice on overcoming the barriers to establishing a truly inclusive workplace. We offer ten key steps to making sexual orientation an everyday diversity issue alongside gender, race and disability.

All the advice is based on methods already used by members of Stonewall’s Diversity Champions programme to promote fair treatment in the workplace. These Diversity Champions range from IBM, Barclays and Ford in the private sector to the Cabinet Office, Manchester City Council and the Royal Navy 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 and retaining 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



The Employment Equality (Sexual Orientation) Regulations 2003 make it unlawful to discriminate in employment or training on grounds of sexual orientation

The Equality Act (Sexual Orientation) Regulations 2007 make it unlawful to discriminate in the provision of goods, facilities and services on grounds of sexual orientation

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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 at the forefront of good practice generally.





Winning the argument

Building the business case for diversity

Lesbian, gay and bisexual people comprise around 6 per cent of the UK population, according to government estimates. That's roughly 3.6 million people, or 1.7 million in the UK 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 four key motivations:

- **reputation** — the need to show the right corporate image to an increasingly discerning population of potential staff and customers
- **recruitment and retention** — the need to become an employer of choice to maintain competitive advantage in an increasingly complex labour market
- **productivity** — the need to retain and motivate the talent

necessary for optimal performance

- **risk mitigation** — the need to comply with a robust set of anti-discrimination laws and avoid the escalating costs of litigation

These four strands of the business case for diversity are interlinked. 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 known to recruit actively from varied communities is likely to be more successful in promoting its goods to a wider market.

Reputation

Organisational reputation is hugely important and becomes more so as the world becomes more competitive and consumers and service users more demanding. In the past, brand association with sexual orientation was sometimes seen as a liability. Now it is frequently perceived as an asset. Addressing issues of sexual orientation can demonstrate that an organisation is courageous and forward-thinking. It can also

furnish an ideal platform to communicate a commitment to a key human rights issue of our times that is also good for business.

It's not only external reputation that can benefit from engaging with issues around sexual orientation. Recent research by the Work Foundation has shown that pride in working for an organisation where strong interpersonal relations and solidarity were manifest was key in differentiating top UK producers.

Conversely, 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. Research by Harris Interactive in the United States has demonstrated that almost three quarters of gay and more than two in five straight consumers are less likely to buy products from companies perceived to hold negative views of lesbians and gay men.

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

Business Benefits

Significantly, gay consumers tend to show higher 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 equality. This could be through sponsorship of events or of gay community organisations.

In the public sector, lesbian and gay people now have the same rights to access public services as everybody else but may not feel able to. They often find their specific needs have been ignored or under-resourced when they do, which can impact on the effective delivery of a huge range of services from health, education and housing to criminal justice and leisure. This can have significant cost implications. With new legislation now in place to prevent discrimination in the provision of goods and services, in both private and public sectors, building reputation sits alongside a compliance imperative.

Recruitment & retention

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. Historically low levels

In 2001, **Barclays** conducted its first staff attitude survey featuring sexual orientation. They found that whilst 10 per cent of staff had experienced bullying in the previous year, the figure for lesbian and gay staff was 23 per cent. Barclays decided to invest in its LGB staff network, Spectrum, and launch a series of initiatives designed to engage its gay staff and customers. These culminated in sponsoring 300,000 copies of Stonewall's plain English guide to civil partnership. In a recent survey, Pink Paper readers voted Barclays the 'number one bank for gay people'.

of unemployment mean that qualified gay employees can take their talent to the most inclusive work environments.

With skills at 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.

Recent Australian research has demonstrated that almost two in five of lesbian and gay staff facing discrimination will change careers if the discrimination continues. Stonewall has found that being positive towards gay recruits is a litmus test for inclusive and effective recruitment generally.

It's not just about attracting the best gay people; it's about attracting the best people full stop.

Productivity

Retaining a motivated workforce is critical because it's the discretionary effort that employees make that is the difference between an organisation and its competition. So how can an employer leverage this discretionary effort? How can an employer increase efficiency and loyalty as well as lower recruitment and retraining costs?

'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

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 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.

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.

One of those core values can be fair treatment of all staff. Research shows that more than one third of lesbian and gay staff conceal their sexual orientation from their employers and co-workers. This creates stress and tension for many staff themselves. But it also has consequences for employers too. All people perform better when they can be themselves. This obvious truth applies in particular to lesbian and gay staff.

There is now evidence to support this assumption. Research in America has found that employees who felt able to be 'out' as gay in safe environments

earn 50 per cent more than their 'closeted peers'. Conversely, more than half of gay employees facing discrimination report direct negative work impact.

The answer is to demonstrate visibly to your staff — gay and straight — that they are valued. Gay staff who feel supported by their employer and work in an accepting environment will show increased commitment.

In 2005 St Mungo's, the homelessness charity, found that a three per cent rise in staff satisfaction translated to a one per cent increase in client satisfaction, evidencing a direct correlation between employee satisfaction and customer satisfaction.

In one recent opinion poll, one in five undergraduates said they would not work for an 'unethical' employer.

Until January 2000, gay personnel could still be dismissed from the British armed services simply for being gay. In 2005, the **Royal Navy** joined Stonewall's Diversity Champions programme. Since then it has undertaken a recruitment strategy to target a cohort of recruits it was missing out on before. It has advertised in *Starting Out*, Stonewall's annual recruitment guide, as well as in various gay publications aimed at its target audience. Since 2006, it has allowed personnel to march in London Gay Pride in uniform thus giving a positive external message of support for gay staff. The Royal Navy has confirmed a marked increase in applications from the gay community and is now regarded as an employer of choice among the armed forces.

Business Benefits

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 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.

Risk mitigation

Employment tribunals taken by lesbian and gay staff as a result of discrimination based on their sexual orientation don't just do reputational damage. They can cost employers significant amounts both of money and organisational energy.

Fighting a discrimination case at an employment tribunal is often a no-win situation. It's time-consuming and costly for both employer and employee and uses

Staffordshire Police has measured its performance as an organisation for its gay staff since 2001. At that time, three per cent of its staff identified as lesbian, gay or bisexual and 328 people preferred not to say. In the most recent survey, eight per cent of staff identified as lesbian, gay or bisexual and only five people preferred not to say. This suggests that over the period 2001–7, Staffordshire Police was successful in changing the culture of the organisation to better allow people to be themselves at work. At the same time they were ranked one of the best performing police services in the country, confirming that performance is not inimical to good practice around diversity.

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 2005 was £17,400 — up eight 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 2005 was £5.5 million.

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.

Rob Whitfield was a business manager at Cleanaway, a large commercial cleaning services company. He was subjected to sustained homophobic bullying such as being made to wear a fairy costume at the Christmas party and repeated hurtful and inappropriate sexual references by colleagues. The tribunal found in his favour and he was awarded £35,000 damages. Equally significant was the damage done to the reputation of the company.

'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, JPMORGAN

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 civil partnerships for gay people. 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'.

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

Several of the major City of London banks — including Citigroup, JPMorgan, Credit Suisse, 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.

the LGBT communities.

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.

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.'



Making it happen

a toolkit for success

Almost every aspect of employment policy and practice throws up specific challenges 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, disability and age. 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, customers or service users on account of their sexuality.

The toolkit should not only help you 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 and service users, 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 every organisation.

Recruitment, training and development, succession planning, equal opportunities policies, benefits packages, treatment of customers and service users — all of these aspects of 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

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

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 Social and Community Planning Research study found that 21 per cent of respondents had been harassed at work, four per cent had lost their job because of their sexuality and eight per cent said they had been refused promotion.

'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

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.
- Provide all your managers with training and development to help them create a climate in which diversity, including sexual orientation, is valued.
- Barclays, IBM, Manchester City Council 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 themselves.

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.
- Training is a valuable tool in raising awareness of LGB issues in the workplace, and should be aimed at all staff. Reinforce the message to all staff that they do not need to tolerate harassment, bullying or unfair treatment of any kind.
- Revisit your grievance procedures and ensure there are mechanisms in place to deal effectively with any problems arising from unfair treatment.
- 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.
- It must accommodate the changes in the law 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.

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.

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

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



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.

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 www.pinknews.co.uk or 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.

'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

- You can raise your profile with LGB jobseekers through sponsorship of LGB community events or jobfairs, through advertising your products or services in the LGB media, and by using LGB-aware images or words in mainstream advertising.
- 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, take advice from LGB staff to help you make sure policies and procedures are inclusive and effective.
- Adding monitoring of sexual orientation to that of other employee groups in the recruitment process sends out a positive message to potential LGB staff, whereas omitting sexual orientation from a monitoring form can send out a negative message that your organisation does not prioritise workplace equality for LGB people.

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

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

Tackle workplace bullying and harassment

Anti-gay 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 that anti-gay harassment is all too common.

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.

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.
- Provide clear definitions of harassment and examples of unacceptable behaviour, including anti-gay bullying and harassment.
- Ensure that managers understand their duties in preventing and tackling bullying and harassment, including respecting confidentiality. Those in positions of responsibility should be equipped to protect their LGB staff, and should not be allowed to ignore or condone discrimination.
- To be credible, any initiative designed to prevent anti-gay bullying and harassment needs to be endorsed and validated by senior staff.

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.
- Informal resolution is preferable, as far as possible, to engaging in formal grievance procedures, but an organisation must actively demonstrate that anti-gay discrimination, bullying and harassment will be taken seriously at this informal stage.
- 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.

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.

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.

- By monitoring the nature of complaints 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.

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

Respondent to Stonewall Cymru survey 2003



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

In the past, anyone with a same-sex partner was likely to be excluded from many workplace benefits. These included pensions, leave arrangements, health insurance, travel concessions for employees and their partners, and relocation allowances. Employers are now obliged to treat lesbian or gay staff who are in a civil

partnership in the same way as married people. To be sure that you don't fall foul of the law, it is advisable to offer exactly the same terms and conditions to both straight and gay staff.

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.

HMRC re-wrote its paternity leave policy so that lesbians are entitled to paid leave if their partner has a baby.

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.

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.

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 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.

Benefits

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.

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.

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.

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.

'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 2003

- 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.

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 any bias in the way they might 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.

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 ethnic minority staff have proved successful across the public, private and voluntary sectors and often 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 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, and also ways to engage with LGB clients, customers and potential recruits.

Gay and Lesbian Employees at **JPMorgan** (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 JPMorgan and Chase in January 2001, the network has been known as Pride and includes bisexual and transgender staff.

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.

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? The network should have a clear business-related purpose, encompassing, for example, contributing to the organisation's inclusion and diversity agenda and

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

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.

improving the work environment for LGBT employees

- When and where will meetings take place? Should they be regional or national, during work or leisure time?
- Deciding on whether the membership should be exclusive to LGBT staff, or open to all staff with an interest in LGBT issues.
- If you are a unionised organisation, should you involve the trade union?
- Find ways to encourage a wide range of participants.

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 LGBT 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 LGBT network. By talking confidently and comfortably about LGBT 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, LGBT titles such as www.pinknews.co.uk or 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 LGBT employee network can:

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



Deliver to your customers

LGB people are likely to be consumers of your goods and services as well as your employees. New laws introduced in April 2007 make it illegal to discriminate against someone when providing them with goods or services because of their sexual orientation.

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 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.

The goods and services legislation applies to both the private and public sectors and outlaws discrimination in access and provision of goods and services. See *The Law in Detail* section for further information.

Action points

Show you recognise your LGB customers and service users and make sure you are not breaking the law by discriminating against them

- Audit your policies and procedures for provision of goods, facilities and services to make sure they do not discriminate, either directly or indirectly, on the grounds of sexual orientation.
- 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, and should make staff aware that

discrimination on the basis of sexual orientation is illegal.

- 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
- avoid legal cases brought by LGB people who have been unfairly discriminated against in this area.

'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 also sends out a strong signal to staff that an organisation takes the achievement of diversity goals seriously, and this is especially true for sexual orientation.

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.

At **Nacro**, the crime reduction charity, the annual Equality and Diversity Audit asks employees to identify their sexual orientation. It also asks employees to comment on the organisation's diversity and inclusion policies and initiatives. In the first Audit in 2000, employees established the need for an LGB employee network, which was duly set up. This has had a positive impact on staff morale, as well as the organisation's reputation and recruitment.

As part of its commitment to a robust equal opportunities policy the **Scottish Parliament** 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.

Key issues

Sexual orientation monitoring will only work if senior staff support the initiative and if a clear business case for collecting the data is communicated to staff. Sexual orientation monitoring is not appropriate for an organisation which has not previously engaged with LGB staff or developed initiatives to eradicate homophobia from the workplace.

Consultation with key stakeholders should take place before monitoring is introduced. LGB staff or the network group can play a vital role in communicating new monitoring procedures to the wider organisation and building

confidence in the process among LGB employees.

There are different degrees of monitoring, and it can be a good idea to start with anonymous monitoring in staff attitude surveys and monitoring at recruitment and promotion to build familiarity with sexual orientation monitoring, before introducing it as part of the formal HR recording process for all staff.

Monitoring of diversity takes time to bed down in an organisation. It will take several years before monitoring information on sexual orientation gives something close to a reliable picture. Staffordshire Police

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

Equal Opportunities Review, 1999

JPMorgan experienced some objections from a minority of staff when sexual orientation was introduced into the firm's equalities monitoring and diversity agenda. In response, the CEO publicly championed diversity and inclusion, including LGB colleagues. He made it clear that while people have a right to their beliefs, hostility towards others on the basis of those beliefs will not be tolerated.

introduced sexual orientation monitoring for all staff in 2001: initially 3% of staff self-reported as LGB, which increased to 6% in 2005 and 8% by 2007.

Nottinghamshire County Council asks staff, through an anonymous equality and diversity survey, if they are out at work. In the survey's first year, 30 per cent of LGB staff were not out at all in the workplace, 38 per cent were out selectively and 33 per cent were out completely. The next year, the number of staff who were out at work increased: 26 per cent were not out at all, 38 per cent were out selectively and 37 per cent were out completely. This demonstrates that the council's changes to policies and procedures are having a positive impact on LGB employees.

Forms should avoid the suggestion that heterosexuality is the expected norm and that being lesbian, gay or bisexual is unusual and they should use commonly understood language. Stonewall research suggests that the question is best phrased in the following way:

What is your sexual orientation?

- Bisexual
- Gay man
- Gay woman/lesbian
- Heterosexual/straight
- Other
- Prefer not to say

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

- Build senior support for the rationale behind sexual orientation monitoring
- Consult with LGB staff and ensure they have confidence in the process
- Ensure that communication to staff on LGB workplace equality is consistent and authoritative, and that monitoring is seen as a logical part of the organisation's diversity strategy
- Introduce monitoring in stages if appropriate, and have realistic expectations in the early years
- Communicate the results of surveys and actions you will take as a result, to maintain engagement of employees

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.



The Law in detail

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

The Civil Partnership Act entitles same-sex couples to legal recognition of their relationships.

The Equality Act (Sexual Orientation) Regulations 2007 outlaw discrimination on grounds of sexual orientation in the provision of goods and services. This is a practical guide to what the 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 or 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, in terms of employment.

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.

The Employment Equality (Sexual Orientation) Regulations 2003

These regulations make it unlawful to discriminate in employment or training on grounds of sexual orientation.

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

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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.

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.

The Regulations have been amended so that employers are now legally obliged to treat staff who are in a civil partnership equally to those who are married, in a wide range of areas. So for example, if an employer allows staff who are about to be married time off for their wedding, it must provide the same benefit to a member of staff about to form a civil partnership. Employers should ensure that any benefits provided to married people extend to those in a civil partnership.

The regulations allow for certain benefits, such as survivor benefits, to be conferred on civil partners and spouses to the exclusion of others without such a status. The effect is that an individual who is neither in a civil partnership nor a marriage, whether gay or heterosexual, cannot claim that such a practice amounts to unlawful discrimination under the Regulations.

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 not in a civil partnership.

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.

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 two main exceptions where discrimination on grounds of sexual orientation may be permitted, both involving occupational requirements.

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.

The Civil Partnership Act 2004

Same-sex couples can now enter into civil partnerships to gain legal recognition of their relationship, entitling them to similar rights and responsibilities as those of married couples.

What does the legislation cover?

The Civil Partnership Act came into force in December 2005, creating a new legal relationship of civil partnership for couples who choose to register. As well as providing important rights, civil partnership also allows them to demonstrate their commitment to each other. Civil partners are treated equally to married couples across a wide range of areas. These include

- Tax, including inheritance tax
- State and occupational benefits
- Income related benefits, tax credits and child support
- Employment benefits

What do employers need to know?

The essential point for employers is straightforward: treat staff who are civil partners in exactly the same manner as you treat staff who are married.

Employers are legally required to do this. The Employment Equality (Sexual Orientation) Regulations 2003 have been amended so that

a civil partner who is treated less favourably than a married person in similar circumstances can bring a claim of discrimination.

The amended provisions have been effective since 5 December 2005, the date the Civil Partnership Act came into force.

In practice this means that if an employer offers a benefits package — such as private health care or gym membership — which is available to the spouse of an employee, it should also be available to an employee's civil partner.

The regulations have also been amended to make clear that more favourable benefits, such as pension survivor benefits, can legally be conferred on civil partners and married people to the exclusion of others who do not have such a status. The Civil Partnership Act allows for one partner to leave a pension to their surviving civil partner in the event of their death.

Some employers already have benefits packages which are available to unmarried opposite-sex partners and same-sex partners of employees, but if there are additional benefits available to married employees, such as time off before or after a wedding, similar benefits should be provided for civil partners.

Equality Act (Sexual Orientation) Regulations 2007

The sexual orientation regulations outlaw discrimination on grounds of sexual orientation in the provision of goods, facilities and services.

What does the legislation cover?

The new Regulations apply to the provision of goods, facilities and services and the exercise of public functions. They cover both the private and public sectors.

The Regulations cover a wide range of areas from housing, healthcare and education in the public sector, to advertising, the provision of financial services and accommodation in a hotel or similar establishment in the private sector. There is widespread evidence of LGB people encountering discrimination in these areas. The laws came into effect in Great Britain on 30 April 2007.

The Sexual Orientation Regulations 2007 make two key kinds of discrimination unlawful: direct discrimination and indirect discrimination. Victimisation is also covered.

Direct discrimination takes place when a person, on grounds of sexual orientation (or perceived sexual orientation), treats another person less favourably than he treats or would treat others. For example, it would be direct discrimination if a landlord refuses

to let a flat to a lesbian couple because of their sexual orientation.

Direct discrimination also covers discrimination on grounds of perceived sexual orientation, whether the perception is, in reality, correct or not. For example, a plumber refuses to work in the flat of a man who he believes to be, but is not in fact, gay — the new laws make this unlawful.

Indirect discrimination occurs where a provision, criterion or practice which is applied generally, puts a person of a particular sexual orientation at a disadvantage as compared to some or all persons who are not of that orientation and cannot be shown to be a proportionate means of achieving a legitimate aim.

Indirect discrimination is more complex and often not as obvious as direct discrimination. An example could be the provision of special commercial terms for newly-wed married couples only, as this would exclude civil partners.

What do employers need to know?

The key point for employers is that these new laws should be seen as an extension of what you currently do for your staff. Just as the 2003 Employment Regulations ensure that your gay and straight employees are treated equally, these laws extend that protection to your customers and service users. Similar laws already protect customers and service users from

discrimination on grounds of their race, gender and disability.

Organisations should audit their activities, particularly customer facing services, to ensure compliance with the new legislation. Think about your outward facing activities, such as how you provide services and offer goods and products. For example, if you ask customers to indicate their marital status on application forms or on your website, make sure you include civil partnership as an option. In conducting the audit, organisations should bear in mind that discrimination can be unintentional rather than deliberate, and indirect rather than direct.

You may find that you don't need to take any action as you're already complying with the law.

You should inform your staff about the laws so they understand what they mean. Lesbian and gay customers and service users should be treated the same as everyone else. If you offer perks, such as reduced gym rates for partners, they should apply to gay couples too. Give your staff training so they know what to do.

What does sexual orientation mean?

As in other legislation, sexual orientation is defined as an individual's sexual orientation towards people of the same sex as him or her (gay or lesbian), people

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of the opposite sex (heterosexual) or people of both sexes (bisexual). This has the effect that the protection against discrimination applies to everyone, whether they are lesbians, gay men, heterosexuals or bisexuals.

The laws apply if discrimination occurs on grounds of the sexual orientation of the person being less favourably treated or on the grounds of the sexual orientation of any other person. So for example, if a business refuses to serve a man who is heterosexual because he is accompanied by a gay man, this would be discrimination.

Are there any exemptions?

Religious organisations

The Regulations provide an exemption for religion or belief organisations, where this is necessary to avoid conflicting either with the doctrine of the organisation, or the strongly held beliefs of a significant number of a religion's followers. This will protect practices that arise from basic doctrines of faith — for example religious blessings for newly-weds.

However, it will not be possible for a religious organisation to qualify for the exemption where they are operating on a commercial basis or providing services to the community on behalf of and under contract with a public authority.

At that point the rights of lesbian, gay and bisexual people to have equal access to those services comes to the fore.

Adoption agencies

Religious adoption agencies have been given until the end of 2008 to adapt their practices in order to comply with the new legislation. During this transitional period, religious adoption agencies who wish to restrict the provision of their services or facilities to a person on the grounds of sexual orientation have a duty to refer them to another adoption agency who would provide such services to persons of that sexual orientation.

Insurance

The regulations include an exemption that will have the same effect in relation to insurance as provisions in the Sex Discrimination Act and regulations made under the Disability Discrimination Act. The Government has stated its intention that this particular exemption will not apply beyond the end of 2008.

Leaving aside this limited exemption, insurance companies will have to comply with the Regulations, so prejudice against gay people will not be a reason for charging someone an extortionate premium for their mortgage insurance. The latest industry guidance by the Association of British Insurers makes clear that

insurers should not ask about sexual orientation or any HIV negative tests, but instead base their assessment of risk on answers provided about actual behaviour, regardless of sexual orientation.

Separate services

The regulations include an exemption to allow services to be provided separately for different groups on the basis of their sexual orientation, where this is the best way to meet a specific need facing people of a particular sexual orientation (which may result from discrimination or disadvantage). For example, to address the low take-up of mainstream sexual health services among gay men.

Charities

The regulations include an exemption for charities whose charitable instrument explicitly specifies a beneficiary group on the basis of sexual orientation. For example, the charity Broken Rainbow provides support for lesbian, gay, bisexual and transsexual victims of domestic violence.

Private Member Clubs

Private members clubs will be required to comply with the regulations, except in cases where sexual orientation is specifically linked to the club's purpose. For example, to provide social activities for gay men in a supportive environment.



Sample Diversity 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

people perform better when they can be themselves

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

The programme has ten key benefits

- **Exclusive networking** with 300 organisations across all sectors, ranging from IBM to Barclays and from Barnardo's to Manchester City Council and the Royal Navy.
- **Best practice seminars** detailed online so you can plan ahead, with top 10 tips and presentations for you to download after each seminar.
- **Dedicated point of contact** available to you at any time by telephone or email with the opportunity for a tailored meeting each year and advice anytime.
- **Tailored benchmarking** to help in the Stonewall Workplace Equality Index — just give us a call and we can sit down with you and identify both 'quick wins' and longer-term goals.
- **Dedicated online access** to Stonewall Diversity Champions Members Only pages as well as regular updates by e-bulletin.
- **In-house training** from Stonewall Masterclasses to Stonewall's DVD training package — both available at a discount for Diversity Champions organisations.
- **Starting Out Recruitment Guide** free and exclusive entry — this is distributed to every university in the country, plus discounted recruitment advertising available.
- **Joint branding** including free and exclusive use of the Stonewall 'Diversity Champion' logo for internal and external communications plus recruitment advertising and sponsorship opportunities.
- **Discounted registration and priority booking** for Stonewall Workplace Conference and Stonewall Leadership programme.
- **Definitive workplace guides** on a range of key workplace issues as well as our small business guide plus Stonewall's latest research on media, health and education

For further information please visit www.stonewall.org.uk/workplace or e-mail workplace@stonewall.org.uk

What employers say about Stonewall Diversity Champions

'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.'

Larry Hirst, Country General Manager, IBM (UK) and Ireland

'Stonewall's Diversity Champions programme will help us to raise KPMG's profile as an employer of choice to the LGB community in order to attract, retain and motivate people of all sexual orientations.'

Sara Turner, Diversity Manager, KPMG

'The Royal Navy's goal is to be a world-class Navy, ready to fight and win. I am committed to ensuring that the Royal Navy has a culture in which all our people are valued for themselves and are thus able to give 100 per cent to their jobs. Our engagement with Stonewall is an important part of making this happen and we strongly support this excellent initiative.'

Vice Admiral Adrian Johns, Second Sea Lord, Royal Navy

Resources

Joining the Diversity Champions programme endorsed what we were trying to achieve, gave the work credibility from an early stage, and provided us with specialist information and resources that we would otherwise not have been able to access. I can honestly say that the money was very well spent — worth every penny!

Sigrid Fisher,
Strategy Officer (Equalities),
Cambridge City Council

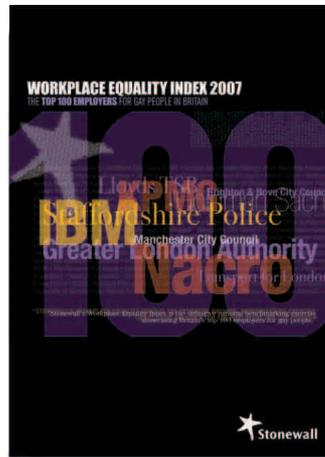
'Barnardo's has gained a number of benefits as members of Stonewall's Diversity Champions programme. Now LGB staff are telling us that they selected Barnardo's as their employer of choice because we are members of the programme, and in an environment where quality recruits are hard to come by that gives us a competitive advantage.'

Ian Theodoreson, UK Director,
Corporate Resources & Lead Director
LGB Issues, Barnardo's

'We will continue to work with Stonewall to continually improve the quality, relevance and accessibility of our service and maintain our 'Excellent' local authority status.'

Roger Latham, Chief Executive,
Nottinghamshire County Council

All our publications are available online in PDF format at www.stonewall.org.uk/workplace or please contact us at workplace@stonewall.org.uk if you would like copies posted to you.



Workplace Equality Index

Stonewall's Workplace Equality Index (WEI) is the definitive national benchmarking exercise showcasing Britain's top employers for gay staff.

The WEI is also now seen as a key measure of an organisation's commitment to diversity generally. Any organisation that secures a place in Stonewall's Index can be justifiably proud of the progress they are making.

Launched in 2005, the WEI is used routinely in both the private and public sectors to benchmark performance. The 1.7 million gay people in the UK workforce use it to see how their employer compares with rivals. However, the Index is also now a key resource for consumers. The 3.6 million lesbian and gay people in Britain use it in deciding where they want to spend their disposable income.



And 150,000 gay students in UK universities use it when deciding where they want to take their talents upon graduation.

Any organisation in the UK can enter the WEI free of charge online at www.stonewall.org.uk/wei

Stonewall Workplace Guides

Stonewall has produced the following workplace guides:

Monitoring: How to monitor sexual orientation in the workplace

Network Groups: Setting up networks for lesbian, gay and bisexual employees

Bullying: Preventing the bullying and harassment of gay employees

Contacts

**Women & Equality Unit,
Department for Communities and
Local Government**

Phone: 020 7944 4400
www.communities.gov.uk

**Advisory, Conciliation and
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Helpline: 08457 47 47 47
Minicom: 08456 06 16 00
www.acas.org.uk

Stonewall

Phone: 020 7593 1850
Minicom: 020 7633 0759
E-mail: workplace@stonewall.org.uk
www.stonewall.org.uk

TUC

Know Your Rights Line
Phone: 0870 600 4882

Employment Tribunals

Phone: 0845 795 9775
Minicom: 0845 757 3722
www.employmenttribunals.gov.uk

Scotland

**Advisory, Conciliation and Arbitration
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Phone: 0141 248 1400
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www.acas.org.uk

Stonewall Scotland

Phone: 0131 557 3679
Email: info@stonewallscotland.org.uk
www.stonewallscotland.org.uk

**Scottish Employment
Rights Network**

0131 556 3006

Wales

**Advisory, Conciliation and Arbitration
Service (ACAS)**

Phone: 029 2076 2636
Helpline: 08457 47 47 47
www.acas.org.uk

Stonewall Cymru

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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.

The Civil Partnership Act, which took effect in December 2005, affords lesbian and gay people exactly the same package of rights and responsibilities that heterosexual people can derive from marriage. Employers are now required to treat staff who are married or in civil partnerships in exactly the same way.

The Sexual Orientation Regulations introduced as a consequence of the Equality Act 2006 provide robust protections to gay people against discrimination in the provision of 'goods, facilities and services', essentially almost any activity in which either business or public providers are engaged.

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. Organisations which provide goods, facilities or services to customers or service users risk legal claims if they discriminate against lesbians and gay people in the provision of these.

3. Communicate the changes

Explaining the new laws to staff and line managers is critical. Make sure everyone understands that LGB staff and customers are protected 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

Same-sex partners registered in civil partnerships must, by law, be treated as equivalent to married partners for all workplace benefits. The best employers also offer equivalent benefits to non-registered same-sex partners as to non-married mixed-sex partners.

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.

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