



A Guide to  
Equality and  
Diversity  
in the Third Sector

*olmec*

***Sexual  
Orientation***



## *EQUALITY STRAND*

This chapter on sexual orientation has been updated and taken from the publication by Olmec *A Guide to Equality and Diversity in the Third Sector (2008)*. The update has been commissioned by the National Equality Partnership with contributions to the update received from the Berkshire Older Lesbian and Gay Forum. A full copy of the Guide can be downloaded from Olmec's website: <http://www.olmec-ec.org.uk/documents/website%5CPublications%2FGuide%20to%20Equality%20and%20Diversity%20in%20the%20Third%20Sector.pdf>

# Sexual orientation

According to Government estimates, lesbian, gay and bisexual people make up about 6% of the UK population<sup>1</sup>. Many people still suffer from harassment and discrimination both in the workplace and in the outside world on the basis of their sexual orientation. A study conducted by the Comparative Organisation and Equality Research Centre in 2006 found that 18% of respondents had suffered discrimination at work. 23% of people had suffered from harassment in the workplace as a result of their sexual preferences.<sup>2</sup>

Positively, 95% of the respondents from third sector organisations said that their employer was gay friendly. It also found that the figures on discrimination and harassment in the workplace were much lower in the third sector than in the private or public sector – although their sample was very small.

## Trans

Many organisations put lesbian gay and bisexual issues with trans issues because all face similar issues around discrimination and harassment. However, because trans people also face unique issues regarding gender identity these issues need to be addressed separately and therefore are not included in this chapter.

## Legislation

### Employment Equality (Sexual Orientation) Regulations 2003

The regulations make it unlawful to discriminate on the grounds of sexual orientation in employment or training. They protect people from discrimination on the grounds of their sexual orientation towards persons of the:

- same sex; or
- opposite sex; and
- same and the opposite sex.

Specifically, it is unlawful to discriminate in the following ways because of someone's sexual orientation:

- refuse to offer them a job;
- offer them terms of employment that are below the standard they would have offered had the person had another sexual orientation;

1. Stonewall.
2. Colgan et al. (2006) *Lesbian, Gay and Bisexual Workers, Equality Diversity and Inclusion in the Workplace* (London Metropolitan University: London).

- deny them opportunities for promotion, transfer, training and receiving other benefits;
- dismissal; or
- subject them to other detrimental treatment such as victimisation or treating them less favourably than other employees.

The regulations also protect people against perceived sexual orientation so that if an employer does not appoint someone to a job because they ‘think’ they are gay even if they are heterosexual then their act would be unlawful. Protection extends to association so that, for example, an employer could be found guilty for discriminating against an employee if they treated them less favourably than others because although they themselves are not a lesbian, they have lesbian friends.<sup>3</sup>

Employers can also be held liable if they do not stop someone being victimised or harassed by colleagues due to their sexual orientation. It is therefore worth providing training or ensuring that employees know that harassment and bullying will not be tolerated. Harassment and bullying can sometimes be subjective and making jokes may be more offensive than someone realises.

### Costs of discrimination claims

This legislation is still relatively new but there have been several judgements which indicate how much it would cost employers if they or an employee was found guilty of discrimination. As discussed in the introduction, the average cost associated with bringing a case to an employment tribunal is £7,484. However, if an employer loses a case then it could cost them a lot more both in terms of payouts and gaining a bad reputation. For example in *Brooks v. Findlay Industries UK Ltd* an employee was awarded £23,000 when his employer did not investigate claims of homophobic bullying and subsequently demoted and then sacked the employee for his absenteeism, which had been a result of this workplace bullying.

### Exceptions

There are several exceptions to the regulations:

Employers can discriminate where there is a genuine occupational requirement (GOR). However, this will be a very limited bracket as they have to prove firstly that it is “genuine, determining and proportionate”. The onus is on the employer to prove that all three have been met. It may be lawful if for example, an organisation provides a counselling service to a lesbian, gay or bisexual community and it is a requirement that the counsellor is from the same group.<sup>4</sup> There is also an exception where employment “is for the purposes of organised religion” and the sexual orientation is required to comply “with the doctrines of the religion” or “to avoid conflicting with the strongly held religious convictions of a significant number of religious followers”. The Catholic Church can refuse to ordain someone as a priest if he were gay.

3. TUC.

4. Trade Union Congress: LGBT Equality in the Workplace: <http://www.tuc.org.uk/equality/tuc-11663-f0.pdf>

The circumstances are limited and it is only meant to cover roles such as ministers of religion or involving work for a church, synagogue or mosque. So for example, a Catholic nursing home would not be able to use the genuine occupational requirement to deny employment to a gay nurse. Lesbian, gay and bisexual teachers in faith schools are also protected. A recent employment tribunal against the Church of England ruled that the claimant had been discriminated against on the grounds of sexual orientation by the Hereford diocesan board of finance after his appointment as a youth worker was blocked. The claimant was awarded £47,000.<sup>5</sup>

## Positive Action

The regulations permit employers to encourage people of particular sexual orientation to apply for jobs or training if they feel that the post they apply for would help redress an imbalance. It applies for other types of services as well. It would be acceptable for a housing association to encourage lesbian, gay and bisexual tenants to join resident participation meetings where there had been a lack of representatives for a long time.

Positive action, is not the same as positive discrimination and it would be unlawful for an employer to employ or promote a person because they were lesbian, gay or bisexual, except where there was a genuine occupational requirement.

## The Equality Act (Sexual Orientation) Regulations 2007

The Regulations came into effect in April 2007 and prohibit the discrimination in the provision of goods, facilities and services on the grounds of sexual orientation. They prohibit discrimination on the basis of a person's:

- **actual** sexual orientation;
- the sexual orientation he/she is **thought to have** and/or;
- the sexual orientation of someone with whom he/she is **associated**.

The regulations cover both direct and indirect discrimination. Direct discrimination is where a service is withheld from a person because of their sexual orientation. Indirect discrimination is where a provision, criterion or practice, which is applied generally, puts a person of a particular sexual orientation at a disadvantage and cannot be shown to be a proportionate means of achieving a legitimate aim. An oft-quoted example is where an insurance company will not provide a package to people who have undertaken a HIV test. As gay men are more likely to have undergone a test this could be construed as indirect discrimination against them.

The regulations are obviously important for the third sector because of the role that the sector plays in service delivery. It means that organisations have to ensure that they are not discriminating when they are providing facilities and services to the general public.

5. See <http://news.bbc.co.uk/1/hi/wales/7234617.stm> and <http://www.stonewall.org.uk/media/>

The Regulations are particularly important to housing associations or to other organisations involved with selling or renting premises as they prohibit discrimination on grounds of sexual orientation when selling or renting property. This would include:

- refusing to sell or rent the premises to a particular person;
- offering less generous terms; or
- discriminating against people on a list of those requiring housing: for example by giving priority to people of a certain sexual orientation, or deliberately overlooking those of a certain sexual orientation.<sup>6</sup>

The fact that a resident was suffering from homophobic bullying from their neighbours would be considered good grounds to move someone from where they are living if they have requested to be moved.

## Exceptions

There is a case for providing services that specifically target the lesbian gay and bisexual community. Many support groups exist to give counselling to LGB people and they are not affected by the regulations. Targeted health campaigns would similarly not be affected by the regulations.

Religious ceremonies such as baptism and marriage are not covered by the new laws. Nevertheless, religious based organisations such as one which provides drug support or care homes would not be able to refuse to provide a service on the grounds of someone's sexual orientation. For example, a charity that offers advice and support to Muslim women would not be able to refuse the service to someone on the grounds that they were a lesbian.

## Civil Partnership Act 2004

The Civil Partnership Act recognises same sex partnerships and grants those that undergo the ceremony the same rights as married couples. Employers particularly need to be aware of this Act because they must treat the civil partners of an employee in the same way that they treat a spouse. Therefore, if the company offers benefits to spouses, such as inviting them to the Christmas party, they must do the same for the civil partner.

Employees whose civil partners are treated differently to the spouse in a marriage will be able to claim for discrimination on the grounds of sexual orientation under the Employment Equality (Sexual Orientation) Regulations 2003.

Homosexuality remains illegal in over 70 countries around the world and penalties range from a few months imprisonment in some countries to life sentences and even the death penalty in Iran, Afghanistan, Yemen, Saudi Arabia, Chechnya, Nigeria, Mauritania, Somalia and Sudan.

Jamaica and other Caribbean Islands, India, Pakistan, the South Pacific and many African countries have very harsh punishments for homosexuality.

Britain only decriminalised male homosexuality in 1967. Before this time, men were imprisoned for having sex with male partners, including the famous playwright Oscar Wilde.

However, it was only in 2007 that the Government finally introduced laws which completed the ban on any form of discrimination of a person on the grounds that they were lesbian, gay or bisexual. This adds to law such as the Civil Partnership Act which granted gay and lesbian couples to form partnerships which recognised their rights in the same way as married couples.

6. This guidance can be found on the Department for Communities and Local Government's website <http://www.communities.gov.uk/publications/communities/guidancenew>

## Sexual Orientation and Age

### Older LGBT issues

Extra information has been included here on older lesbian, gay, bisexual and trans issues. It demonstrates that people cannot be easily compartmentalised into one of the equality strands and that some people suffer multiple forms of discrimination. Age Concern has highlighted some of the issues that older gay, lesbian and bisexual people face. A recent study by the *Brookdale Center on Ageing* in New York found that older lesbians, gay men and bisexuals have significantly diminished support networks when compared to the general older population:

- up to 75% of older lesbians, gay men and bisexuals live alone (compared to less than 33% in the general older population);
- 90% have no children (compared to less than 20% in the general older population);
- 80% age as single people, without a life partner or 'significant other' (compared to less than 40% in the general older population).<sup>7</sup>

## Resources

### *The Colour of Your Money: A Guide to New Protections for Gay People* (Stonewall)

A guide providing several examples of how the regulations introduced in the Equality Act (2007) apply in everyday situations.

[http://www.stonewall.org.uk/documents/the\\_colour\\_of\\_your\\_money\\_final.pdf](http://www.stonewall.org.uk/documents/the_colour_of_your_money_final.pdf)

### *Guidance on new measures to outlaw discrimination on the grounds of sexual orientation in the provision of goods, facilities and services* (Communities and Local Government).

A document that provides guidance on the practical effects of the equalities Act 2007 and the exceptions provided within it.

<http://www.communities.gov.uk/documents/communities/doc/485013.doc>

### *Making Equality Simple* (NCVO)

A guide to the 2003 Employment Equality Regulations on religion, belief and sexual orientation for the voluntary sector with a focus on recruitment, retention and writing references.

The publication can be downloaded for free from:

<http://www.ncvo-vol.org.uk/publications/>

7. [www.ace.org.uk/AgeConcern/openingdoors\\_facts.asp](http://www.ace.org.uk/AgeConcern/openingdoors_facts.asp)

### **Civil Partnerships: Advice for Employers (Women and Equality Unit)**

This resource provides more information on the Act and its implications for employers:

<http://www.gayfinance.info/civil-partnerships/civil-partnership-employers-advice-05.pdf>

### **Prescription for Change: Lesbian & Bisexual Women's Health Check 2008**

A report on a survey of health needs of Lesbian and bi-sexual women and their experience of the health sector.

[http://www.stonewall.org.uk/documents/prescription\\_for\\_change\\_1.pdf](http://www.stonewall.org.uk/documents/prescription_for_change_1.pdf)

### **Homophobic Hate Crime: The Gay British Crime Survey 2008**

A report on a national survey into the extent and nature of homophobic hate crime.

[http://www.stonewall.org.uk/documents/homophobic\\_hate\\_crime\\_final\\_report.pdf](http://www.stonewall.org.uk/documents/homophobic_hate_crime_final_report.pdf)

### **Love Thy Neighbour: What People of Faith Really Think About Homosexuality**

A report on focus groups exploring the perception held by faith communities of gay and lesbian people and of the range of attitudes that exist.

[http://www.stonewall.org.uk/documents/love\\_thy\\_neighbour.pdf](http://www.stonewall.org.uk/documents/love_thy_neighbour.pdf)

### **The Double-Sided Glass Ceiling; Lesbians in the Workplace**

A report on research into the experience of lesbian and bi-sexual women in the work place and their perceptions and expectations of the impact that their sexuality might have on them at work.

[http://www.stonewall.org.uk/documents/doubleglazed\\_glass\\_ceiling.pdf](http://www.stonewall.org.uk/documents/doubleglazed_glass_ceiling.pdf)

### **The Teachers' Report: homophobic bullying in Britain's schools**

A report of a survey of teachers and non-teaching staff about their experiences of homophobic bullying of pupils in their schools and the inclusion of sexual orientation issues in the classroom.

[http://www.stonewall.org.uk/education\\_for\\_all/research/2731.asp](http://www.stonewall.org.uk/education_for_all/research/2731.asp)

## Organisations

### Stonewall

Stonewall is an organisation which campaigns on lesbian gay and bisexual (LGB) issues. Its website contains a whole section on workplace issues for LGBT people and information that may be useful to an organisation seeking to implement good practice. It offers training to diversity champions in organisations. It also runs an accreditation scheme that organisations can sign up to and get a kite mark.

<http://www.stonewall.org.uk/workplace/>

### Stonewall

Tower Building  
York Road  
London SE1 7NX  
Tel: 020 7593 1850  
Info Line: 08000 50 20 20  
Fax: 020 7593 1877  
Minicom: 020 7633 0759  
Email: [info@stonewall.org.uk](mailto:info@stonewall.org.uk)  
[www.stonewall.org.uk](http://www.stonewall.org.uk)

### Consortium of Lesbian, Gay, Bisexual and Transgendered Voluntary and Community Organisations

The LGBT consortium is an organisation for lesbian, gay, bisexual and transgender voluntary organisations.

### Consortium of LGBT VCOs

J111 Tower Bridge Business Complex  
100 Clements Road  
Southwark  
London SE16 4DG  
Tel: 020 7064 8383  
Fax: 020 7064 8382  
Email: [information@lgbtconsortium.org.uk](mailto:information@lgbtconsortium.org.uk)  
[www.lgbtconsortium.org.uk](http://www.lgbtconsortium.org.uk)

### **Broken Rainbow LGBT Domestic Violence Service UK**

Offers information and advice to LGBT people who experience domestic violence and abuse from current and former partners, and/or from family members. It also assists employers and domestic violence support agencies.

### **Broken Rainbow LGBT Domestic Violence Service UK**

J414

Tower Bridge Business Complex

100 Clements Rd

London SE16 4DG

Helpline for survivors: 0845 260 4460

Helpline for agencies: 0845 260 5560

Minicom: 0207 231 3884

Email: [mail@broken-rainbow.org.uk](mailto:mail@broken-rainbow.org.uk)

[www.broken-rainbow.org.uk](http://www.broken-rainbow.org.uk)

### **Families and Friends of Lesbian and Gays**

This organisation provides support to parents and their gay, lesbian or bisexual children. Helps parents to accept, understand and support children.

### **Families and Friends of Lesbian and Gays**

PO Box 495

Little Stoke

Bristol BS34 9AP

Central Helpline no: 0845 652 0311

Email: [info@fflag.org.uk](mailto:info@fflag.org.uk)

[www.fflag.org.uk](http://www.fflag.org.uk)

### **Kairos in Soho**

Promotes the health and well-being of the LGBT community.

### **Kairos in Soho**

Unit 10

10-11 Archer Street

Soho

London W1D 7AZ

Tel: 020 7437 6063

Email: [info@kairosinsoho.org.uk](mailto:info@kairosinsoho.org.uk)

[www.kairosinsoho.org.uk](http://www.kairosinsoho.org.uk)

## **GALOP**

Challenges homophobic and trans-phobic hate crime. It describes itself as a community safety charity.

## **GALOP**

2G Leroy House  
436 Essex Road  
London N1 3QP  
Tel: 0207 704 6767  
Fax: 0207 704 6707  
Email: [info@galop.org.uk](mailto:info@galop.org.uk)  
[www.galop.org.uk](http://www.galop.org.uk)

## **NLGBA (Northamptonshire Lesbian, Gay & Bisexual Alliance)**

N-Compass Office  
13 Derngate  
Northampton NN1 1TY  
Tel: 01604 619870  
Email: [info@nlgba.com](mailto:info@nlgba.com)  
[www.nlgba.com](http://www.nlgba.com)

## **PACE**

PACE is London's leading charity promoting the mental health and emotional wellbeing of the lesbian, gay, bisexual and transgender community. Counselling service for LGBTs.

## **PACE**

34 Hartham Road  
London N7 9JL  
Tel: 0207 7001323  
Email: [info@pace.dircon.co.uk](mailto:info@pace.dircon.co.uk)  
[www.pacehealth.org.uk](http://www.pacehealth.org.uk)

## **Chrysalis**

Working for the rights & perspectives of LGBT people

44A East Dulwich Road  
London SE22 9AX  
Tel: 0207 635 0476  
Email: [san.nad@virgin.net](mailto:san.nad@virgin.net)  
<http://www.schools-out.org.uk/teachingpack/chrysalis.htm>

## AGE AND SEXUAL ORIENTATION

### Older People's projects

#### AGLOW (Association of Greater London Older Women)

Manor Gardens Centre  
9 Manor Gardens  
London N7 6LA  
Tel/Fax 020 7281 3485  
Email: [admin@aglow.uninet.co.uk](mailto:admin@aglow.uninet.co.uk)

#### Berkshire Older Lesbian & Gay Forum (BOLGAF)

The Forum organises social events such as film events, tea dances and meals out. It collaborates with other Lesbian and Gay organisations in the UK, works with statutory and voluntary agencies to support older lesbians and gay men who receive their services and contributes to campaigns to end the discrimination that older lesbians and gay men face.

#### Berkshire Older Lesbian and Gay Forum

PO Box 75  
Reading RG1 7DU  
Tel: 0776 987 5661  
Email: [stevebolgaf@yahoo.co.uk](mailto:stevebolgaf@yahoo.co.uk)  
[www.bolgaf.org.uk](http://www.bolgaf.org.uk)

#### EACH - Somerset Education Action Challenging Homophobia

EACH is the award-winning charity for young people and adults affected by homophobia. It is also a not-for-profit training agency for employers and organisations committed to realising an equal and safe working environment for all regardless of age, sex, ability, ethnicity, faith, gender identity or sexuality. Nationally, EACH delivers consultancy and training for the Department for Children, Schools and Families, the Qualifications and Curriculum Authority, Children and Young People's Services, Local Education Authorities, the Criminal Justice System, local government, Health, Libraries, Youth, Housing and Social Services, registrars, the trade unions and the third sector.

#### Each

Office 27  
42 Triangle West  
Clifton  
Bristol BS8 1ES  
Tel: (+44) 0117 946 7607 / 0800 1000143  
Email: [info@eachaction.org.uk](mailto:info@eachaction.org.uk)  
[www.eachaction.org.uk](http://www.eachaction.org.uk)

### **OLN Wales (Older Lesbian Network)**

OLN Wales is a self-supporting network. Membership is open to all women of 35 and over, defining themselves as lesbian, and who are committed to anti-discriminatory principles.

### **OLN Wales ( Older Lesbian Network)**

PO BOX 2435

Cardiff CF23 0BE

Email: [oln@olnwales.org.uk](mailto:oln@olnwales.org.uk)

### **Young People's projects**

#### **Queer Youth Network**

The Queer youth Network is a national non-profit making organisation that is run by and for Lesbian, Gay, Bisexual and Transgendered (LGBT) and Queer young people.

Queer Youth Network aims to represent the needs and views of LGBT young people through campaigning for greater visibility and equal rights, as well as providing general support and information to those who are just 'coming out' or who are suffering the effects of homophobia.

#### **Queer Youth Network**

c/o Lesbian and Gay Centre

49-51 Sidney Street

Manchester, M1 7HB

Email: [info@queryouth.net](mailto:info@queryouth.net)

National Helpline : 08703834796

Fax: 0161 2416733

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[www.improvingsupport.org.uk/equalityanddiversity](http://www.improvingsupport.org.uk/equalityanddiversity)

Your gateway to third sector support, information and resources.

