

Birmingham City Council Equality Act 2010 Fact sheet

SEXUAL ORIENTATION EQUALITY

The Equality Act (2010) consolidates all previous equality legislation and extends some protections to groups that were not previously covered. However, within the Act there are some significant differences and exceptions in terms of the protections for the different groups. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This Fact Sheet looks at the provisions with regard to **SEXUAL ORIENTATION**. It is part of a series of fact sheets that highlight the relevant points pertaining to the Act for each of the “protected characteristics”. For more detailed guidance and information about the provisions, refer to the [Equality Act 2010 Statutory Code of Practice Employment](#) and the Equality Act 2010 [Statutory Code of Practice Services, public functions and associations](#).

WHAT IS MEANT BY SEXUAL ORIENTATION?

The Equality Act 2010¹ defines sexual orientation as meaning “a person’s sexual orientation towards:

- persons of the same sex (that is, the person is a gay man or a lesbian)
- persons of the opposite sex (that is, the person is heterosexual); or
- persons of either sex (that is, the person is bisexual)

By definition, the characteristic of ‘sexual orientation’ covers people from all sexual orientations, including lesbian, gay, bisexual and heterosexual people.

WHO IS PROTECTED UNDER SEXUAL ORIENTATION?

Legal protection from discrimination on the basis of sexual orientation applies to everyone, whatever their sexual orientation. Nonetheless, the Act offers significant opportunities to address heterosexism and its resulting effect on lesbian, gay and bisexual people.

WHAT FORM OF PROTECTION DOES THE ACT PROVIDE?

As with other protected characteristics, the Act provides protection from sexual orientation discrimination in employment, services, and associations. This includes protection from:

Direct Discrimination – i.e. when a person is treated less favourably than another person because of their protected characteristic including sexual orientation. The Equality Act includes two supplementary forms of direct discrimination, which covers all protected groups (except Marriage and Civil Partnership and Pregnancy and Maternity). These are:

¹ Equality Act 2010 Statutory Code of Practice – Services, public functions and associations
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(i) Discrimination by Association - e.g. a person is discriminated against or harassed because he or she is **associated** with another person who has a protected characteristic.

Example: A manager treats a worker (who is heterosexual) less favourably because she has been seen out with a person who is gay. This could be direct sexual orientation discrimination against the worker because of her association with this person.

Source: EHRC [Equality Act 2010 Statutory Code of Practice Employment](#)

(ii) Discrimination by perception - A person is discriminated against or harassed because he or she is mistakenly thought to share a protected characteristic, such as a particular sexual orientation.

Indirect Discrimination - i.e. where a rule, a policy or a practice applies to everyone but places persons sharing a protected characteristic at a particular disadvantage, including people of a particular sexual orientation.

Harassment - i.e. unwanted behaviour related to a relevant protected characteristic, such as sexual orientation, which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

It isn't necessary for a person to have a protected characteristic to qualify for protection from harassment, including sexual orientation harassment. As stated in the Equality Act 2010 Code of Practice (Services, Public Functions and Associations). "Protection is provided because the conduct is dictated by a relevant protected characteristic, whether or not the (*victim*) has that characteristic themselves"²

Example: A worker is subjected to homophobic banter and name calling, even though his colleagues know he is not gay. Because the form of the abuse relates to sexual orientation, this could amount to harassment related to sexual orientation.

Source: [Equality Act 2010 Statutory Code of Practice Employment](#)

The prohibition of sexual orientation harassment only applies to employment and work related activities (This is also the case for religion or belief). The Act does not prohibit sexual orientation harassment in the provision of services, exercising of public functions or the activities of associations. Even so, a person subjected to sexual orientation harassment outside of the workplace may pursue a claim of unfair treatment under the direct discrimination provisions.³

²The Equality Act 2010 Statutory Code of Practice (Services, public functions and associations)

³ Equality Act 2010 Explanatory Notes: Revised Edition, August 2010

Victimisation – i.e. where a person is treated badly because they have made or supported a complaint related to the Act (e.g. a complaint about sexual-orientation discrimination). The sexual orientation of the person being victimised is irrelevant.

ARE THERE ANY EXCEPTIONS?

The Act contains exceptions which permit discrimination in the provision of services, the exercise of public functions or the activities of associations.⁴ In the case of sexual orientation, an exception applies where it concerns religious organisations in so far as such organisations may restrict:

- a) Membership
- b) Participation in activities undertaken by or on behalf of the organisation or under its auspices
- c) The provision of goods, facilities or services in the course of such activities; or
- d) The use or disposal of premises owned or controlled by the organisation

However, as outlined in the Statutory Code, none of the restrictions are permitted unless it is imposed

- a) because it is necessary to comply with the doctrine of the organisation; or
- b) to avoid conflict with the strongly held religious convictions [or convictions relating to a belief] of a significant number of the religion's or belief's followers⁵

The exemption does not apply to religion or belief organisations that have been contracted to carry out a public function on behalf of a public authority.

Example: A local authority contracts out to a religious organisation the running of a parent and toddler group. The project includes building mutual support among the parents, involving open discussion at fortnightly meetings. A few parents say that they feel uncomfortable discussing personal matters with gay and lesbian parents. The organisation explains that as the council has contracted with them to provide this service they are not permitted to discriminate because of a parent's sexual orientation.

Source: [Equality Act 2010 Statutory Code of Practice – Services, public functions and associations](#)

In certain circumstances, it is lawful for an employer to require a job applicant or worker to have (or not have), a particular protected characteristic. This is known as "occupational requirement"⁶ For example, an employer might specify that job applicants must be gay or lesbian.

The employer must be able to demonstrate that the requirement is crucial to the nature and context of the work and is a proportionate means of achieving a legitimate aim.

⁴ Equality Act 2010 Statutory Code of Practice (Services, public functions and associations)

⁵ Ibid (Para 13.26)

⁶ Equality Act 2010 Statutory Code Employment

Example: An organisation which provides counselling services for young gay men may be able to show that there is an occupational requirement for the counsellors to be gay, as callers may not feel comfortable discussing some issues with a heterosexual counsellor

Source: ACAS: [A guide for employers and employees – Sexual Orientation and the workplace](#)

Organised religious bodies may apply an occupational requirement for persons employed to be of a particular sexual orientation or faith in certain circumstances. For instance, they may require a person to be heterosexual.

Example: The trustees of a Mosque want to employ two youth workers, one who will provide guidance on the teachings of the Koran and the other purely to organise sporting activities not involving promoting or representing the religion. The trustees apply an occupational requirement for both workers to be heterosexual. It might be lawful to apply the occupational requirement exception to the first post but not the second post

Source: [Equality Act 2010 Statutory Code Employment](#)

What about positive action? - There are provisions for employers and service providers to develop and introduce positive action measures and initiatives aimed at addressing inequality and disadvantage specific to a protected characteristic including sexual orientation. As stated in the Equality Act 2010 Code of Practice (Services, public functions and associations) Statutory Code of Practice:

“The Act contains provisions which enable service providers to take proportionate action to achieve fuller and more effective equality outcomes for members of groups that are socially or economically disadvantaged or excluded, or who otherwise face the consequences of past or present discrimination or disadvantage. These are known as the ‘positive action’ provisions”⁷

DO PUBLIC BODIES HAVE A DUTY TO PROMOTE SEXUAL ORIENTATION EQUALITY?

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate sexual-orientation discrimination, advance equality of opportunity for lesbian, gay and bisexual people, and foster good relations between LGB and heterosexual groups.

Accordingly, Local authorities need to be much more proactive in tackling sexual orientation discrimination and inequalities and in identifying and responding to the needs of lesbian, gay and bisexual communities when designing and delivering services.

⁷ The Equality Act 2010 Statutory Code of Practice (Services, public functions and associations) par 10.1-10.32.

Resources and Contacts:

1. Equality Act 2010 Statutory Code of Practice Employment
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf
2. Equality Act 2010 Statutory Code of Practice Services, public functions and associations
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicescode.pdf
3. EHRC (Equality & Human Rights Commission), the statutory body with responsibility to enforce and promote equality across the protected characteristics www.equalityhumanrights.com
4. Birmingham City Council (LGBT) Employees' Network - The network is made up of employees who either identify as lesbian, gay, bisexual or transgender, or are supportive of the issues faced by this diverse group.
<http://inline.birmingham.gov.uk/lgbt>
5. Birmingham LGBT leads on a number of projects and initiatives aimed at improving the quality of life of lesbian, gay, bisexual and trans communities. www.blgbt.org/. They have also published a mapping report into LGBT lives in Birmingham. The report titled 'Out and About' was commissioned by Birmingham City Council and covers areas such as health, diversity, homophobic bullying and hate crime. Birmingham LGBT
6. Stonewall – the lesbian, gay and bisexual charity – Is a national organisation that promotes LGB equality through a number of activities including lobbying, campaigning, research, consultancy and through promoting best practice through its work with organisations, including local authorities. Stonewall also supports individuals through information and sign-posting. <http://www.stonewall.org.uk>
7. Pink Shield – Birmingham is a community led organisation which strives to influence West Midlands Police and other agencies to improve LGBT safety in Birmingham. The group hold regular open public meetings, details about forthcoming meetings will be published.
<http://en-gb.facebook.com/pinkshieldbham?sk=info&filter=2>