



A guide for further education and higher education

Managing the interface: sexual orientation and faith

Guidance July 2010

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Foreword



I am delighted to present *Managing the interface: sexual orientation and faith*. This resource looks at the experiences of employers, staff and learners in managing the needs and relationships between people of different sexual orientations and religions or beliefs.

At Lifelong Learning UK our role is to support lifelong learning employers, including those in further and higher education, to recruit, retain and develop suitably skilled and effective employees at all levels. We believe that equality and diversity should be at the heart of everything we do. A diverse workforce drives creativity and innovation; inspiring learners and staff to achieve to their full potential.

Promoting and advancing sexual orientation and religion or belief equality is still in its infancy within the lifelong learning sector. There is a growing body of evidence demonstrating how learning providers are promoting inclusion and tackling competing issues related to these diverse groups. This resource acknowledges that managing diversity brings its own challenges, and in order to provide safe and inclusive work and learning environments it is vital for us to ensure that the whole workforce is appropriately trained, has the flexibility to respond to changing needs and is recruiting the best people from a wide talent pool. It is our vision that the UK lifelong learning sector will be the best in the world, and we believe that with continued hard work and commitment we can achieve this.

This research, supported by the Forum for Sexual Orientation and Gender Identity Equality in Post-School Education, seeks to understand the relationship between sexual orientation and religion or belief equality, and to identify good practice in managing the relationship between the two.

We welcome your comments and warmly encourage you to provide feedback to us about this resource at equalityanddiversity@lluk.org.

A handwritten signature in black ink that reads "S. P. Dutton".

Sue Dutton
Chief Executive
Lifelong Learning UK



Acknowledgements

“We were very happy to participate in the preparation of this guidance and the accompanying research. We believe that together these resources will enable further education managers to deal more confidently with their responsibilities to manage the entitlements of staff and learners under the religion and belief and the sexual orientation strands of equalities legislation.”

Dr John Wise, Chief Executive of the National Council of Faiths and Beliefs in Further Education

“We welcome the research and guidance developed by Lifelong Learning UK and partners which offers a real opportunity for further education to integrate these issues more systematically and meaningfully into its culture and practice.”

Margaret Adjaye, Programme Director
– Equalities and Diversity
The Learning and Skills Improvement Service

“Equality and diversity has been at the heart of the work of the Learning and Skills Council, and we are pleased to have supported the development of this innovative project. We hope that it will help colleges and providers to promote cohesion between learners from all groups, and enable them to achieve even better outcomes.”

Dan Simons, Policy Manager
– Equality and Diversity
Learning and Skills Council

“We welcome this report and the research, and believe that colleges strive towards being inclusive institutions where all staff and students are able to work and study without fear of harassment or bullying and are valued as individuals. It is clear from this research that this is a sensitive area where there are particular challenges. The AoC is pleased to have been involved in this joint project, which we hope will enable colleges to meet these challenges in a positive and constructive manner.”

Evan Williams, Director of Employment and Professional Services
Association of Colleges

“The Equality Challenge Unit supports higher education to realise the potential of staff and students whatever their age, race, gender, disability, sexual orientation, religion or belief. We are therefore extremely pleased to welcome this guidance to help organisations manage the interface between sexual orientation and religion or belief. The research shows that at times this can be a difficult area, but also that there are extremely positive messages that can be used to tackle prejudices and preconceptions in these areas.”

[Chris Hall, Senior Policy Adviser
Equality Challenge Unit](#)

“The Forum’s guiding hope from initial idea to delivery has been that in the hands of practitioners, at every level, this research and guidance may support and develop good relations and promote understanding in our Universities and Colleges. Using this valuable resource previous difficulties may be overcome and advances made within and between these two equality areas. We welcome its production and commend it as a tool to progress equality work and develop active approaches throughout post school education.”

[Seth Atkin
Chair
The Forum for Sexual Orientation and Gender
Identity Equality in Post School Education](#)

“The University and College Union supports LGBT members and promote good relations in Universities and Colleges. UCU welcomes this research and guidance as a way of enabling our reps and members to ensure that staff and students can work and study in our institutions free from discrimination and harassment. As a national Union we continue to work towards a real experience of equality and diversity and welcome the findings and recommendations as a contribution to the knowledge and understanding that can further guide our work.”

[Laura Miles
NEC LGBT FE rep and Chair of the LGBT
members’ standing committee
University and College Union](#)

Lifelong Learning UK would like to thank the Sexual Orientation and Faith Advisory Board for their input to this guidance. The board was made up of members from the following organisations:

- Association of Colleges (AoC)
- Association of Teachers and Lecturers (ATL)
- Equality Challenge Unit (ECU)
- Learning and Skills Council (LSC)
- Learning and Skills Improvement Service (LSIS)
- National Council of Faiths and Beliefs in Further Education (FBFE)
- National Union of Students (NUS)
- University and College Union (UCU)

Introduction

This guidance was produced from the research study *Managing the interface: sexual orientation and faith* commissioned by Lifelong Learning UK, and supported by the Forum for Sexual Orientation and Gender Identity Equality in Post-School Education (The Forum) and The National Council for Faiths and Beliefs in Further Education (FBFE).

The research study explored the management of the interface between sexual orientation equality and equality on the grounds of religion or belief in the further and higher education sectors in England.

It found that where equality and diversity was deeply embedded in the culture and ethos of learning providers, relations between these two equality groups tended to be mutually respectful. In other circumstances there was the potential for significant tension and difficulty. Informed, consistent action by the learning provider to develop mutually respectful relationships was vital. The research found examples of good practice across the sector and a widespread demand for practical guidance in developing practice still further.

This guidance is for all those working in the further and higher education sectors (including further education colleges, higher education institutions, work based learning and adult and community learning) who have a responsibility for or interest in the effective management and support of staff and learners and/or equality and diversity.

It is designed to support users in ensuring that sexual orientation equality and equality on the grounds of religion or belief are managed and promoted on equal terms, without undue tension arising between them. It will be helpful in managing and dealing with tensions or conflicts between these two equality groups should they arise.

The guidance will also help users to:

- meet the requirements of equality legislation
- embed a culture and ethos of inclusion and respect for difference in their organisations
- develop an approach to equality and diversity that promotes good relations between sexual orientation equality and equality on the grounds of religion or belief
- meet the needs of its learners and staff with different sexual orientations and different religions or beliefs
- develop and implement a single equality scheme or comparable methods of embedding equality into mainstream business planning.

The production of this guidance is timely in view of the new Equality Act 2010 and recognises the need for a joined up approach which encourages being proactive rather than one driven solely by legislation.

Findings from the research also reinforced the importance of adopting an anticipatory approach when considering the management of issues relating to the inter-relationship between these two equality groups rather than simply responding to incidents as they arise.

The guidance provides an overview of the legal requirements for the sector, and is then structured around six functional areas of further and higher education. Where key issues arose across all areas these are presented separately as follows:

- staff services
- learner residences
- student services and students' unions
- teaching, learning and assessment
- governance
- the role of trade unions
- policy – ensuring parity for all groups
- bullying and harassment.

The final section of the guidance includes references and sources of information including helpful publications, guidance materials and websites. The appendix provides additional information on the legislation.

The structure of the guidance is designed to enable users to turn directly to sections that may address their immediate professional concerns. Whilst this is a practical way of using the guidance, it will also be helpful to consider the guidance as a whole document since none of the functional areas operate in isolation. A 'joined-up' approach is likely to yield maximum results. Whilst this guidance offers possible approaches and strategies it should be noted that the list is not exhaustive.

This guidance is presented without prejudice. While it examines the implications of legal cases it does not constitute legal advice.



1. What the law requires of the sector

The Equality Act 2010

The main aim of the Equality Act 2010 is to simplify and clarify the law by replacing existing equality legislation and related regulations to achieve a consistency of approach to all of the equality strands now known as ‘protected characteristics’. The main provisions of the Act will come into force in autumn 2010. As well as dealing with workplace discrimination, the Act covers the provision of goods and services, managing premises, education, and the functions of public bodies.

Rather than being made up of separate parts dedicated to individual equality strands, the act sets out nine protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

The Equality Act 2010 does not include new grounds of discrimination, as gender reassignment, marriage and civil partnership, pregnancy and maternity are also covered by the Sex Discrimination Act 1975. The purpose of the Equality Act 2010 is to rationalise and strengthen the existing legislation.

A summary of legal requirements prior to the Equality Act 2010 is set out in appendix 1, which also includes information on employers’ vicarious responsibility, the admission and treatment of learners, achieving a balance between the two equality groups, and details of relevant case law.

Public sector equality duty

A key development in the Equality Act 2010 is the public sector equality duty placed on public authorities (part 11, s.149). The duty requires public authorities to take a proactive approach to equality across all of the protected characteristics.

The duty will require a public authority to:

- eliminate discrimination, harassment and victimisation
- advance equality of opportunity for all
- foster good relations between those who share protected characteristics and those who do not.

An organisation that is not a public authority but exercises public functions – such as a work based learning provider – would need to ensure that due regard is given to the above points and address the protected characteristics.

The act clarifies that this duty is designed to ensure that:

- disadvantage suffered by those who share a protected characteristic, which is connected to that characteristic, is removed
- the specific needs of those who share a protected characteristic are met
- people who share a protected characteristic who are underrepresented in public life are encouraged to participate
- prejudice is tackled and understanding promoted.

This new duty will have significant implications for public authorities in identifying, understanding and managing the relationships and interfaces between sexual orientation equality and equality on the grounds of religion or belief.

While this guidance does not constitute legal advice, and providers may sometimes need to take such advice to help them resolve particular issues, what follows are some key considerations that providers may wish to take into account.

2. Staff services

2.1 If religion or belief comes into conflict with the needs of the job

A situation may arise where a member of staff objects to teaching about aspects of sexual orientation or religion or belief because they claim it goes against their own beliefs. Or they might, for example, object to distributing marketing material at a lesbian, gay or bisexual event for similar reasons. To date there is no record of such cases occurring in the post-16 sector, but it may be prudent to consider how such a situation could be resolved were it to arise.

In the case of *Islington v Ladele*¹, a Christian local authority registrar avoided carrying out civil partnership ceremonies because she claimed it was against her religious beliefs to do so. The Employment Tribunal Appeal ruled that because all registrars had been required to carry out civil partnerships Ms Ladele had not been unlawfully discriminated against. It ruled that this requirement was justified as a reasonable means of achieving the legitimate aim of promoting equal opportunities and tackling discrimination. It also found that the local authority was entitled and obliged to insist that Ms Ladele performed those duties.

In the case of *Mitchell v. Strathclyde Fire and Rescue*², however, a Christian firefighter was disciplined for refusing to distribute fire service leaflets at a gay pride march, claiming it was against his religious principles to do so. In an out of court settlement the fire service apologised to Mr Mitchell and withdrew its disciplinary sanctions.

In the case of *Islington v Ladele* the local authority was able to justify its requirement. In *Mitchell v Strathclyde Fire and Rescue* this may have proved more difficult.

Lessons learned

- Employers should take care to consider an employee's request related to their religion or beliefs. However requests must be balanced with legitimate business needs and, in particular, the right not to be discriminated against on the grounds of religion or belief should not translate into the right to manifest religion or belief in a way that discriminates against others.
- Employers should distinguish between the basis of an employee's objections to carrying out a particular job-related duty – in other words their religion or belief – and the employer's reason for addressing this behaviour, which may in some circumstances constitute misconduct. Employers should be guided by their judgment of what constitutes a legitimate business need.
- Where the provider has a legal duty not to discriminate against service users, and an equality and diversity policy which commits it to promoting all strands of equality (for example a single equality scheme), it is entitled to require its staff to participate in the non-discriminatory provision of services.

What providers can do to prevent and respond to tension

- Develop clear and inclusive equality and diversity policies that cover all equality strands, including sexual orientation and religion or belief, giving equal status and weight to each of the strands.
- Give careful consideration to this and other similar guidance (information about other resources can be found at the end of this document).

¹See appendix I for further information.

²See appendix I for further information.

- Deliver staff induction that includes clear and appropriate treatment of equality and diversity policy and its implications for teaching and learning.
- Recognise that personal and private opinions and beliefs will be respected while public adherence to corporate equality and diversity policy will be required.
- Create an ethos in which different views, opinions, religions and beliefs are respected and openly discussed and debated.
- Ensure applicants and employees comply with the equality and diversity ethos and policies of the institution.
- Check their compliance against legal obligations.
- Explain to colleagues who may experience a conflict between their personal views and their professional role that they are expected to represent the provider rather than themselves, and that teaching about aspects of sexual orientation or about religion or belief will not be taken to indicate personal agreement with or endorsement of what is being taught or explored.
- Work with trade unions and students' unions to establish a shared approach.
- Be sensitive to the religions and beliefs of staff and if requiring them to undertake activity that may be in conflict with their religion or beliefs ensure that there is a robust justification for doing so, linked to the core purpose and business of the organisation.

Should a staff member object to/refuse to teach aspects of a course or undertake other related activities because of their personal views

- Explain that further education staff should follow the prescribed curriculum.
- Explain that refusal to teach an essential part of the curriculum in further education constitutes a failure to deliver what the employer requires and is potentially a matter that could lead to disciplinary action being considered.
- Ensure the member of staff is fully aware of the requirements of the equality and diversity policy.
- If discussion and encouragement fail to resolve the matter be ready to institute appropriate disciplinary action and/or seek outside mediation. Involve trade unions.

2.2 Staff training and induction

The research found an absence of training related to managing the interface between sexual orientation equality and equality based on religion or belief. It identified a need for such training to support staff working in a wide range of roles. The role of human resources is key to ensuring that adequate and appropriate training is available to all staff, and that staff attend training that is provided. Below are recommendations that came from the research.

- All staff should receive training in how to implement the provider's equality and diversity policies and/or schemes.
- All staff should be trained to understand the provider's disciplinary policy and its application to breaches of the equality and diversity policies and/or schemes.
- Academic staff would benefit specifically from training designed to enable them to deal effectively with learners who may refuse to engage with ideas relating to sexual orientation and/or religion or belief.

- Residential wardens would benefit from training that illuminates the potential difficulties that may arise between sexual orientation and religion or belief equality and which provides mediation and dispute resolution skills, as well as training in implementing disciplinary policy.
- Student services staff would benefit from training to enable them to consider how to actively promote good relations between learners with different sexual orientations and religions or beliefs.
- Chaplaincy staff would benefit from training that familiarises them with the needs of lesbian, gay and bisexual learners, and that supports them to develop strategies for engaging with religiously motivated homophobia and homophobia more generally.
- Staff induction should ensure that all staff are familiar with the provider's equality and diversity policies and/or schemes and include an appropriate treatment of sexual orientation.

2.3 Staff code of conduct

The research identified the importance of **anticipatory planning and corporate intervention** to resolve tensions or conflicts between sexual orientation equality and equality on the grounds of religion or belief. It found that an embedded culture and ethos of inclusion and respect for difference made a positive impact on relations between the two equality groups.

The staff code of conduct, like the learner charter, can be a powerful instrument for establishing the required principles and standards of staff behaviour if used appropriately. In doing so it should reflect clear statements in the provider's mission and vision statements. Trade unions can play a key role in negotiations over developing a staff code of conduct.

The staff code of conduct can:

- be developed and reviewed in ways that incorporate the views of staff with different sexual orientations and with different religions or beliefs – particular attention should be paid to gaining the views of lesbian, gay and bisexual staff who hold a religion or belief
- require all staff to abide by the provider's equality and diversity policy or single equality scheme, with special emphasis being given to the prohibition of bullying and harassment on all grounds
- draw attention to the fact that all equality groups are of equal importance
- recognise as a fundamental premise that a place of learning is one in which different views coexist and can be contested within a culture of respect for difference, and that all views and opinions can legitimately be challenged and interrogated
- draw attention to the potential conflicts between different equality groups and set out the corporate commitment to managing those conflicts within a policy-led context of mutual respect and open, democratic debate
- guarantee support for and recognition of the needs of staff with different sexual orientations and religions or beliefs.



2.4 Staff support

The research highlighted the practice of providers supporting the development and work of staff equality networks, which allows staff to meet in groups or networks organised on the basis of a single equality strand. This included staff networks for those with a religion or belief and for those who were lesbian, gay or bisexual.

The effective management of the interface between sexual orientation equality and equality on the grounds of religion or belief was shown to be facilitated by the joint, cooperative work of these different staff networks. Examples of such joint work included shared participation in significant events such as a memorial service for the Holocaust Memorial Day, and joint participation in staff induction and training.

In many cases such activity brought individuals together from different networks who would not otherwise have met, in some cases because of preconceived, negative stereotyping; enabling mutually respectful relationships to develop.

Human resources departments can:

- consider enabling the development of staff equality networks based on equality strands including religion or belief and sexual orientation
- give careful consideration to specialist guidance on establishing staff networks (information about useful resources can be found on page 23 of this document)
- include a commitment to respecting the members and purposes of all the networks and to developing joint activities between the networks where appropriate in the terms of reference of the networks
- involve trade unions where appropriate to facilitate membership of networks.

3. Learner residences

The research found that university halls of residence were sometimes a site of tension and conflict between learners who were lesbian, gay or bisexual and learners with different religions or beliefs. Tensions occurred in residences in which there was no selection on the basis of equality strands and also in residences that were organised on the basis of religion, where lesbian, gay and bisexual coreligionists were harassed because of their sexual orientation. In most cases of this kind no official complaints about harassing behaviour were made by learners to the authorities responsible for the residences. As a result, no intervention was forthcoming and the affected learners left the residences and sought other accommodation elsewhere.

What are the issues?

- Bullying and harassment – possible breach of policy.
- Learner safety – physical and psychological.
- Learner retention – if unresolved the affected learner may leave.
- Learner success – academic progress may be affected.
- Legal liability – the provider may be open to litigation.

What providers can do to prevent and respond to tension

- Include a commitment to abide by the provider's behaviour, anti-bullying and equality and diversity policies in residency agreements.
- Prominently display anti-bullying and equality and diversity policies in halls of residence.
- Train residence wardens and security staff to respond to tensions between learners on the grounds of sexual orientation and religion or belief.

- Hold induction discussions with learners led by the warden or other representative of the providers to set out the provider's expectations about behaviour, bullying and equality and diversity, including the unacceptability of religiously motivated homophobia.
- Provide learners with an easy-to-use complaints procedure.
- Consult other related guidance in this area (information about useful resources can be found on page 23 of this document).
- Involve students' unions in the process so that they can respond and support learners.
- Ensure all incidences are dealt with consistently, irrespective of whether they relate to sexual orientation or religion or belief.
- Ensure they do not accept religion or belief as justification for bullying or harassment.
- Investigate officially all complaints about bullying or harassment and take evidence from both sides.
- Work with students' unions so that they are aware of any difficulties and can also provide a supportive role for learners.
- Implement consistent disciplinary procedures – those proven to have bullied or harassed should routinely be disciplined, and, as a last resort, removed from the residence.
- Bring the full authority of corporate policy and procedure to bear on any complaint about bullying, harassment or other types of discrimination.

4. Student services and students' unions

The research identified the importance of adopting an anticipatory approach to resolve tensions or conflicts between sexual orientation equality and equality on the grounds of religion or belief. It found that an embedded culture and ethos of inclusion and respect for difference made a positive impact on the relationship between the two groups.

4.1 Learner charter

The learner charter or its equivalent, if used appropriately, can be a powerful instrument for establishing the required principles and standards of learner behaviour in relation to these two equality groups. In doing so, it should reflect clear statements in the provider's mission and vision statements.

The learner charter can:

- be developed and reviewed in ways that include the views of learners with different sexual orientations and with different religions or beliefs – particular attention should be paid to gaining the views of lesbian, gay and bisexual learners who hold a religion or belief
- emphasise that all equality groups are of equal importance
- require all learners to abide by the provider's equality and diversity policy and/or single equality scheme, with special emphasis being given to the prohibition of bullying and harassment on all grounds
- recognise as a fundamental premise that a place of learning is one in which different views coexist and contest within a culture of respect for difference, and that all views and opinions can legitimately be challenged and interrogated

- draw attention to the potential conflicts between different equality groups, and set out the corporate commitment to managing those conflicts within a policy led context of mutual respect and open, democratic debate
- guarantee support for, and recognition of, the needs of learners with different sexual orientations and religions or beliefs.

4.2 Relations between learners

The research identifies some specific challenges regarding relations between learners, including:

- interpersonal conflict often including bullying and harassment in university halls of residence and within religious societies or groups
- conflict between individuals and groups – for example traditional religious groups harassing lesbian, gay or bisexual students
- conflict between groups or societies, where candidates for elected office who may be lesbian, gay or bisexual are not supported by societies of different faiths or beliefs because of their sexual orientation.

The research showed too the importance of intervention or mediation by the provider's authorities designed to resolve tensions or conflicts. Such intervention is important in contributing to mutually respectful relations. The research also highlighted the value of students' union activity in breaking down barriers between these two equality groups.

Policies and rules

- Provider equality and diversity policies and schemes should address all groups covered by protected characteristics on equal terms (Learning and Skills Council (LSC)/Learning and Skills Improvement Service (LSIS) 2009).

- Provider equality policies and schemes should outline how bullying and harassment on the grounds of all the equality groups is prohibited.
- Bullying and harassment should constitute a serious breach of discipline for which exclusion from the organisation is a final sanction.
- Equality policies and schemes should take account of the potential for conflict between different equality groups and make explicit provision for mutual respect.
- Providers should ensure – in line with their equality policies and schemes – that learner codes of conduct, charters and, where relevant, tenancy agreements between learners and college controlled residences all include clauses prohibiting bullying and harassment on the grounds of all the equality groups which should be named.
- Equality impact assessments should assess the potential for conflict or tension between different equality groups and set out mitigating actions.
- Learner induction materials and activities should deal explicitly with the unacceptability of bullying and harassment – they could include illustrative examples of unacceptable behaviour, including examples of tension or bullying between lesbian, gay and bisexual learners and those with different religions or beliefs.
- Relevant staff should be made aware of the potential for conflict or tension between lesbian, gay and bisexual learners and those with different religions or beliefs and be trained to manage, defuse and deal with such situations equitably and fairly.
- The terms on which religious learner societies and lesbian, gay and bisexual learner societies are sanctioned and funded by either the college or university or by the students’

union should include a requirement to refrain from any bullying or harassing behaviour, and a requirement that behaviour between the societies remains respectful and within the organisation’s rules and policies at all times.

Promoting good relations

The research highlighted some successful approaches to dialogue and bridge-building, which can resolve divisions. These approaches concentrate on sharing and exploring experiences rather than focussing on what may seem to be mutually excluding principles.

- Student unions can convene discussions between the officers of lesbian, gay and bisexual societies and religious societies to support them in leading their groups in ways that support mutually respectful and positive relations and that focus on shared experiences of being a learner.
- Where societies receive union or other funding a condition of funding could include standards of behaviour linked to the relationship between sexual orientation and religion or belief.
- Learner societies can organise meetings, discussions or debates which allow their different perspectives to be explored and which facilitate participants sharing their experiences.
- Public events should be well planned, with members of societies briefed about acceptable standards of behaviour before the events are held, and relevant staff briefed.
- Student services departments can convene similar discussions and debates and have these issues and approaches reflected in tutorial programmes.
- Chaplaincies can actively counter and engage with religiously motivated homophobia and homophobia more generally.

Providing support to lesbian, gay and bisexual learners who have a religion or belief

The research illustrated that there are significant numbers of learners who are lesbian, gay or bisexual and have a religion or belief. Learners in this position may feel they have to focus on one of these aspects of their identity at the expense of the other, often giving rise to painful choices and internal conflict.

Colleges, universities and students' unions can consider:

- encouraging funded religious learner societies to facilitate the full participation in their activities of lesbian, gay and bisexual coreligionists
- encouraging funded lesbian, gay and bisexual societies to facilitate the full participation of peers who have a religion or belief
- ensuring that chaplaincies are organised to be open, inclusive and with a specified role to cater for the religious and spiritual needs of all members of the learning community
- ensuring that chaplaincies are organised, trained and equipped to challenge religiously motivated homophobia
- ensuring that equality policies and schemes make specific provision for learners who are lesbian, gay or bisexual and have a religion or belief.

4.3 Chaplaincy

The research identified college and university chaplaincies and other forums that bring different religions or beliefs together as being able to play a powerful role in promoting equality and diversity, and in challenging religiously motivated homophobia. They also help to meet the needs of many learners and staff with a religion or belief who feel marginalised by what they experience as the secular ethos of many learning providers.

Chaplaincies and other official religious forums often hold events that are not specifically centred on religious observance but which celebrate or commemorate events such as the Holocaust Memorial Day, and which are organised to include lesbian, gay and bisexual groups and individuals as well as those from all the other equality groups. Such events have a positive impact on the relationship between sexual orientation equality and equality on the grounds of religion or belief.

The research found that university chaplains are likely to have an 'arms-length' relationship to the university. Nevertheless, their work within the corporate equality policy or scheme, their capacity to support lesbian, gay and bisexual learners and their capacity to challenge dogmatism will remain important features.



Establishing a centre to bring different religions and other equality groups together

The research found that one university in the North West had established an interfaith centre. The impetus for the centre's establishment was the emerging single equality scheme for the university which set out to meet the needs of those with different religions or beliefs and to support their interface with the other equality groups. The vision statement for the centre, which provides an exemplary model of an open, moderate, inclusive provider-based centre for religion or belief, is anchored in the provider's single equality scheme.

4.4 Learner support

The research identified the benefits of provider support for the development and work of learner equality networks, including learner networks for those with a religion or belief and for those who were lesbian, gay or bisexual. Such networks were often organised with the support of the students' union and/or the student services department.

As in the area of staff support, the effective management of the relations between sexual orientation and religion or belief was facilitated by the joint, cooperative working by these different learner networks. Such activity brought individuals together from different networks who might not otherwise have met, in some cases because of preconceived, negative stereotyping, enabling mutually respectful relations to develop.

Student services departments and students' unions could:

- consider enabling the development of learner equality networks
- ensure this includes networks based on religion or belief and on sexual orientation
- ensure networks include in their terms of reference a commitment to respecting the members and purposes of all networks, and to developing joint activities where appropriate.

5. Teaching learning and assessment

5.1 Academic freedom

The research identified instances of academic disruption, by religiously dogmatic learners of different faiths. Typically, a lecture or seminar exploring aspects of family structure or human sexuality might be interrupted by groups of learners trying to prevent discussion going forward on the basis of their dogmatic views. While the overwhelming majority of religious learners are never involved in such activity, small numbers in both universities and further education colleges are, and can impact negatively on the quality of teaching and learning.

The research found that lecturers and tutors often felt unprepared and lacked confidence to respond to such disruption and sometimes allowed it to close down discussion and debate.

What providers can do

- No learner should be allowed to disrupt or prevent free academic debate in any university or college setting – this should be stated clearly in relevant publications such as learner charters and handbooks.
- Religious belief is not an acceptable reason for actions that disrupt teaching and learning. There should be no prohibition on any religious views, but disruptive action arising from religious beliefs can and should be prohibited.
- Academic disruption of this sort should be treated as a serious disciplinary offence and could, in the last instance, lead to exclusion from the organisation.
- Academic staff should be briefed on this and trained in how to manage any such attempted disruption.

- Some staff may benefit from being trained in facilitation and mediation skills to support them to manage disruption of this kind.
- Robust debate between religious and non-religious perspectives and between perspectives within religious traditions should be welcomed and used to enrich academic discourse. Dogmatic religious adherents will need to accept that their view has no right to dominate or to escape challenge. Lesbian, gay and bisexual learners will similarly need to accept that within rules requiring respect, their own assumptions and opinions can also be challenged. Such exchange, and the active management of difference, are central to the core purpose of a college or university.
- College and university chaplaincies can be powerful advocates against religious dogmatism and can become involved in developing responses to dogmatic views, opinions and actions from within religious discourse.
- If academic disruption originates from college, university or students' union funded groups and it cannot be stopped, funding authorities should consider withdrawing funding. This option should be set out clearly in the terms and conditions under which funding is made available.

The research found no examples of the disruption of teaching and learning by lesbian, gay or bisexual groups objecting to the teaching of religious perspectives. However the same approach would apply should this occur.

6. Governance

The research identified that governing bodies and boards of learning providers need to play a key role in providing a strategic lead, on equality and diversity generally and on managing the interface between sexual orientation equality and equality on the grounds of religion or belief.

Governing bodies and boards need to consider ways to:

- promote and communicate their strategic leadership role regarding equality and diversity
- maximise a strategic leadership role in the equality and diversity policy and practice of their organisation
- ensure the strategic leadership role is reflected in the organisation's equality and diversity policy, single equality scheme or similar, to embed equality into business planning
- identify a member or members to take lead responsibility for equality and diversity on the governing body
- ensure their own membership will model equality and diversity and include people with different sexual orientations and different religions or beliefs
- meet their equality and diversity training needs and undertake appropriate training
- interrogate and 'equality proof' board or governing body business
- regularly seek evidence from senior managers to ensure that the organisation is compliant with equality legislation, including the duty to promote good relations between different groups
- regularly seek evidence that the interface between sexual orientation equality and equality on the grounds of religion or belief is being managed well, with due consideration being given to both strands and to the relationship between the two
- require management action on any aspect of legal compliance and compliance with the organisation's equality and diversity policy
- receive a regular report from senior managers on the progress of, and challenges facing, equality and diversity, including the effective management of the interface between sexual orientation equality and equality on the grounds of religion or belief
- Work with trade unions to promote and encourage positive relations between different equality groups.

7. The role of trade unions

The research showed that there can sometimes be a mismatch between national trade union policies and branch level practice relating to equality and diversity and the management of the interface between sexual orientation equality and equality on the grounds of religion or belief.

Sector trade unions should consider how they can work to:

- promote understanding of, and action on, national equality policies at local and branch level
- develop and deliver appropriate and high quality training to branch officials – designed to enable them to play an active and positive role in ensuring the effective management of the interface between sexual orientation equality and equality on the grounds of religion or belief
- encourage staff members with different sexual orientations and different religions or beliefs to join them and take an active role in their work
- encourage members with different sexual orientations and different religions or beliefs to undertake leadership roles at all levels of the union
- provide guidance and support to local branches to enable them to play an active role in achieving the effective management of the interface between sexual orientation equality and equality on the grounds of religion or belief
- incorporate issues relating to the effective management of the interface between sexual orientation equality and equality on the grounds of religion or belief into collective bargaining.





8. Policy – ensuring parity of treatment for all groups

The research found examples of providers taking the perceived needs of one equality group over another; for example how learners with different religions or beliefs might react negatively to the promotion of equality on the basis of sexual orientation by a provider.

The law is clear that such ranking of equality groups is unwarranted and should be avoided. The aim of a single equality scheme or similar method to embed equality objectives and equalities legislation is to deliver a coordinated approach to equality, with a balanced and equal approach to all of the different equality groups.

A further example from the research was the perception that some overseas learners with a religion or belief may have difficulty accepting that attitudes and laws relating to homosexuality in the UK are different to those in their home countries. Assumptions that these learners would be discouraged from attending learning environments that promote sexual orientation equality are without foundation and should not be acted on.

Providers can:

- ensure that their equality and diversity policies and single equality schemes give equal weight to each of the protected characteristics (LSC/LSIS 2009)
- reflect parity of treatment in action and implementation plans
- avoid practice which prioritises one group over another unless there is a legally acceptable, tested, justifiable and transparent justification for doing so
- treat cautiously assumptions about how individuals or groups from one equality group might react to the promotion of equality for individuals and groups from others – they are likely to be based on unfounded stereotypical assumptions and lead to unsatisfactory outcomes.



9. Bullying and harassment

The research found widespread bullying and harassment of learners at the interface of sexual orientation equality and equality on the grounds of religion or belief. Most of it was directed towards lesbian, gay and bisexual learners from a small minority of learners with dogmatic religious views.

Providers should ensure that:

- anti harassment and bullying policies identify homophobic harassment and bullying resulting from religiously motivated homophobia as within scope and as unacceptable
- religious belief is not acceptable justification for any type of harassment or bullying
- sexual orientation is not an acceptable justification for any type of bullying or harassment directed against people with a religion or belief
- instances of bullying and harassment are systematically recorded along with the grounds on which it took place
- reporting procedures are user friendly, simple, credible and reliable
- lesbian, gay and bisexual individuals and individuals with different religions or beliefs are made aware that the provider encourages them to report bullying or harassment and is committed to providing redress in proven cases.

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Useful websites:

Advisory, Conciliation and Arbitration Service (ACAS) – <http://www.acas.org.uk>

Equality and Human Rights Commission – <http://www.equalityhumanrights.com>

Equality Challenge Unit – <http://www.ecu.ac.uk>

Forum for Sexual Orientation and Gender Identity in Post-School Education –
<http://www.lluk.org/3487.htm>

Further Education Browse (FE Browse) – <http://www.febrowse.org>

Government Equalities Office – <http://www.equalities.gov.uk>

Imaan (LGBT Muslim support group) – <http://www.imaan.org.uk>

Learning Skills Improvement Service (LSIS) The Excellence Gateway –
<http://www.excellencegateway.org.uk/>

Lesbian and Gay Christian Movement – <http://www.lgcm.org.uk>

National Council for Faiths and Beliefs in Further Education (FBFE) – <http://www.fbfe.org.uk/>

National Union of Students – <http://www.nus.org.uk>

Stonewall – <http://www.stonewall.org.uk>

Trade Unions Congress – <http://www.tuc.org.uk>

UNISON – <http://www.unison.org.uk>

University and College Union – <http://www.ucu.org.uk>

Appendix I: Further information

Legal background

Pre 2003 – European Convention of Human Rights

Cases of religion or belief and sexual orientation discrimination were heard in employment tribunals and courts prior to the introduction of both sets of regulations: Employment Equality (Sexual Orientation) Regulations 2003 and Employment Equality (Religion or Belief) Regulations 2003.

The European Convention of Human Rights covers freedom of religion and non-discrimination on grounds of sexual orientation. Article 9 allows individuals “freedom of thought, conscience and religion”. This includes freedom for an individual to change their religion or belief and freedom to worship, teach, practice and comply with their religion or belief. The convention limits this freedom to activity in the interests of public safety, to protect public order, health or morals, or to protect other people’s rights and freedoms. Article 9 therefore protects ‘freedom of religion’ rather than offering protection against discrimination on grounds of religion or belief.

Article 14 of the convention protects from discrimination by stating that people should enjoy the rights and freedoms set out in the convention without discrimination on any ground including “other status”. Significantly, sexual orientation is not mentioned with the other protected equality groups. Therefore, the European Court of Human Rights interprets ‘other status’ to include sexual orientation.

Post 2003 – UK Regulations

The Employment Equality (Sexual Orientation) Regulations came into force on 1 December 2003 and the Employment Equality (Religion or Belief) Regulations on 2 December 2003. They were introduced as a result of a European Union

Directive requiring all member states to have this protection in place. They extended equality law in Great Britain and made it unlawful for employers to discriminate because of a person’s sexual orientation or religion or belief.

The regulations, the Equality Act 2006 and provisions in the Equality Bill 2009 apply to all employment and vocational training and include recruitment, terms and conditions, promotions, transfers, dismissals and training. They make unlawful on the basis of sexual orientation or faith or belief:

- direct discrimination – that is, treating people worse than they would treat other, because of their sexual orientation or because they follow/do not follow a particular religion or belief or because they believe them to have these characteristics
- indirect discrimination – that is, applying a condition, restriction or practice which disadvantages people on the grounds of sexual orientation or a particular religion or belief unless the disadvantageous element can be objectively justified
- harassment – unwanted conduct that abuses a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them (considering all the circumstances including the perception of the victim)
- victimisation – when a complaint has been made or is intended about discrimination because of a person’s sexual orientation or religion or belief

Discriminate also continues to be unlawful after a person leaves their place of work.

The Sexual Orientation and Religion or Belief Regulations (2003) also made it unlawful to discriminate in employment and vocational training, against learners and employees on the grounds of sexual orientation or perceived sexual orientation.

The Equality Act 2006 extended this to provide protection against discrimination in the provision of goods and services. For a learning organisation this means services such as learning, facilities and accommodation for learners and service users.

The Civil Partnership Act 2004, taking effect in 2005, provides lesbian, gay and bisexual people similar rights and responsibilities to those of married heterosexual people.

Legal definitions of sexual orientation and religion or belief

The 2003 Regulations established the legal definitions of sexual orientation and religion and belief. These definitions are carried into the Equality Act 2010.

In the Equality Act 2006 part 2, section 35, sexual orientation is defined as “an individual’s sexual orientation towards persons of the same sex, persons of the opposite sex, or both”. It includes heterosexual, homosexual and bisexual orientation. This definition does not include transsexuality. This relates to gender and is covered in the employment context by sex discrimination law such as, for example, the Sex Discrimination (Gender Reassignment) Regulations 1999. However, clearly the transsexual population will include the full range of sexual orientations.

‘Religion’ means any religion or belief which includes any religious or philosophical belief. All the major religions are included within the definitions; as are less well-known religions or beliefs. The definitions of religion or belief are widely drawn.

If something appears to have the characteristics of a religion, or of religious or philosophical belief, it is likely to fall within the definitions.

The notion of religion or belief in the Equality Act will be interpreted by the courts with reference to relevant case law, including that relating to the European Convention on Human Rights. This will mean that to be protected by equality law, a faith or belief should attain a certain level of clarity, seriousness and cohesion that is compatible with human dignity. Therefore, the idea of religion will include, but not be limited to, those religions widely recognised in Britain such as the Baha’i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism, and Zoroastrianism (Department for Communities and Local Government, 2007a).

The Equality Act 2006, part 2, states that discrimination on the grounds of lack of religion or belief is also outlawed. It will therefore be unlawful to discriminate against someone because, for example, they do not belong to a particular religion (or any religion at all), or they do not adhere to a particular belief, such as humanism.

Applying legal exceptions and exemptions – potential for discrimination?

Organisations such as the Lesbian and Gay Christian Movement (LGCM) have raised concerns about some of the exceptions and exemptions to the terms of the sexual orientation Regulations, and the Equality Act 2010 (LGCM, 2009).

They welcome the recognition that protection will cover people who belong to the same religious group or denomination but do not share all its beliefs as stated in the Equality Act 2010. They also welcome the proposed public sector equality duty, one of the main pillars of the act; to

act towards eliminating discrimination, harassment and victimisation, advance equality of opportunity, tackle prejudice and promote understanding. More specifically the support working towards achieving equality of opportunity and fostering good relations between people who share a protected characteristic and people who do not share it (Equality Act 2010 s.149).

The most contentious issue has been the extent to which religious organisations in particular could exercise choice (or discriminate) over their appointments. On the one hand the aim of the legislation is to eliminate all discrimination, but on the other there are clear cases when a person's individual characteristics or attributes are either an essential part of the job or a barrier to gaining a job (House of Commons research paper 03/54, 2003). For example religious organisations can lawfully refuse to employ a person because the person is lesbian, gay or bisexual.

The regulations provide a comprehensive law banning discrimination in employment on the grounds of religion or belief and sexual orientation. They cover all stages of the employment process, including recruitment, conditions of continuing service, pay, promotion and dismissal, subject to a 'genuine occupational requirement exception' which allows discrimination where:

- being of a particular religion or belief is a genuine and determining occupational requirement for the job; and
- it is proportionate to apply that requirement in the particular case where the employer has "an ethos based on religion or belief" (the occupational requirement need only be "genuine", not necessarily "determining"), (House of Commons research paper, 2003).

However, it is the general occupational requirement in the sexual orientation regulation which has attracted most attention. In this case, discrimination is allowed if:

- being of a particular sexual orientation is a genuine and determining occupational requirement for the job; and
- it is proportionate to apply that requirement in the particular case (House of Commons research paper 03/54 2003).

And, secondly if:

- the employment is for purposes of an organised religion and the employer applies a requirement not to employ lesbian, gay or bisexual people –
 - (i) in order to comply with the doctrines of the religion, or
 - (ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers (Equality Act 2010).

Employers' vicarious responsibility

Under the religion or belief and the sexual orientation requirements of part 2 of the Equality Act 2006, employers are responsible for the actions of their staff and those delivering a service on their behalf, whether or not they know about or approve of the act. For example, if a learning provider's employee refuses to serve or to teach a person because of their faith or belief or their sexual orientation the organisation would be potentially liable as well as the individual concerned. This concept of vicarious liability has serious implications for employers.

It is a defence however if the learning provider can prove that it took reasonable steps to prevent the discrimination from taking place. Reasonable steps may include training staff in the legal requirements of part 2 of the Equality Act. Sector organisations will therefore need to take steps to ensure staff are aware that such discrimination is unlawful and what the implications are for them in carrying out their work. Individuals who are concerned that the requirements of their job may be incompatible with their religious beliefs may ask their employer to move them to work that does not put them in the situation that requires them to act against their faith. However, this can only work successfully if there is mutual consent.

Sector employers need to be sensitive to all of their employees' protected characteristics, including religion or belief and sexual orientation, and be mindful of their obligations under the Employment Equality (Religion or Belief) and (Sexual Orientation) Regulations 2003 and Equality Act 2006 not to discriminate against their staff because of their faith or belief or their sexual orientation.

The Equality Act 2006

The Equality Act 2006 made provision for the establishment of the Commission for Equality and Human Rights; to dissolve the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission; to make provision about discrimination on the grounds of religion or belief; to enable provision to be made about discrimination on the grounds of sexual orientation; to impose duties relating to sex discrimination on persons performing public functions and to amend the Disability Discrimination Act 1995 (Equality Act, 2006: ch3).

Part 3 of the Equality Act 2006 allows the government to introduce regulations outlawing discrimination on the ground of sexual orientation in the provision of goods and services. These are contained in The Equality Act (Sexual Orientation) Regulations 2007. They follow the same framework as part 2 of the act which deals with religion and belief.

The Equality Act (Sexual Orientation) Regulations 2007 outlaws discrimination in the provision of goods, facilities, services, education and public functions on the grounds of sexual orientation, therefore incorporating the provisions of the employment regulations of 2003 but widening the ambit of legal provision.

As under part 2 of the Equality Act 2006 in relation to religion and belief it is, subject to certain exceptions, unlawful for a person or organisation that provides goods, facilities or services to the public (or a section of the public such as pensioners or mothers) to discriminate on the grounds of sexual orientation in any of the ways defined by the Regulations of 2007 against a person who seeks to obtain, or use those goods, facilities or services. This includes the provision of education, training and learner accommodation.

What organisations might do

Organisations might update their guidelines and policies to include sexual orientation and faith or belief equality and distribute them to all staff. They should make clear that all equality strands require equal respect and equal treatment. Disciplinary and grievance policies may need updating to ensure staff are aware of the behaviour that is expected of them, and to make employees who believe they have been discriminated against aware of the complaints procedure.

Organisations should consider staff awareness training, particularly for managers, who may be unaware that what they are doing indirectly breaches the legislation.

Admission and treatment of learners

The Equality Act 2006 applies to current learners or a person who applies to be admitted as a learner:

- in the process for deciding who is offered admission as a learner
- in the terms it offers to admit the person as a learner
- by not admitting the person as a learner
- in the way it provides education for the learner
- in the way it allows the learner access to a benefit, facility or service, or prevents the learner from accessing such benefits, facilities or services
- by not providing education for the learner
- by excluding the learner
- by subjecting the learner to any other disadvantage because of their faith or belief or their sexual orientation.

This means learning providers must not harass or victimise a learner or someone who wants to become a learner in the way it decides who to admit, the terms on which it admits a learner or the way a person is treated when admitted. For example, if a further education college refuses to admit a man who applies to be a learner because he is gay, or if a university refuses to provide residential accommodation to Jewish or Muslim learners while providing accommodation for learners generally, they may be guilty of unlawful direct discrimination.

The legislation does not apply to the content of the curriculum. This allows higher and further education sector organisations to include a full range of topics, ideas and materials in their syllabus and to expose learners to different kinds of thoughts and ideas. However they need to ensure that the way the curriculum is taught does not subject learners to discrimination or harassment.

Achieving a balance in legal protection

The religion or belief and sexual orientation provisions of the Equality Act 2006 are intended to balance the right of individuals and groups to express their own religion or belief with the right of individuals to express their sexual orientation. The provisions are not intended to give one equality strand more importance than another. The provisions are there to ensure that when people work or study they are treated fairly and with respect irrespective of their sexual orientation or faith or belief.

Expanding equality legislation to include the protected characteristics of religion or belief and sexual orientation makes equality conflict an important consideration. Moreover, when the law establishes exceptions and allows discrimination on grounds of sexual orientation in delivering services and facilities an inequality of application of the law is institutionalised. Such an exception applies specifically to services provided by religious organisations. These factors make it more likely that equality conflicts on the grounds of sexual orientation and religion or belief will arise, and present significant challenges to higher and further education organisations trying to employ staff and provide learning fairly.

Implementing the law: case law

A person's religion or belief is likely to be personal to them. However an individual might have strong views that may relate to a religion while the requirements of a particular religion that apply to its followers may be different (Maleiha, 2009). This creates difficulties for policy staff in further and higher education sector organisations; for example deciding on what to promote as good religious practice, often in the face of protests from those following the religion who claim that this is not in keeping with the belief (Diamond, 2008).

Cases of religion or belief and sexual orientation that are concerned with direct discrimination tend to be concerned with how the person's faith or belief may be (in)compatible with their professional obligations rather than with the validity of the individual claimant's belief (Maleiha, 2009).

It is important to note that as well as employment, the sexual orientation regulations also cover students at further and higher education institutions (regulation 20) (Trades Union Congress, 2009).

Case 1: *Islington v Ladele*

Ms Ladele, a registrar of births, deaths and marriages following the introduction of the Civil Partnerships Act 2004, avoided carrying out civil partnerships because they did not fit with her Christian beliefs on marriage. She avoided carrying out civil partnerships by swapping her allocated duties with colleagues. A number of her gay colleagues complained that this was unfair and that she should be required to comply with the council's 'Dignity for All' policy. This policy committed the council to delivering its services without discrimination.

The council followed its disciplinary procedure when the employee refused to conduct civil partnerships because she believed that doing so would violate her religious beliefs. Ms Ladele complained to an employment tribunal that she had been directly discriminated against and subjected to unlawful harassment by her employer on grounds of her religion. The original tribunal upheld her complaint. However, this was overturned when the council appealed to the Employment Tribunal Appeal.

The Employment Tribunal Appeal held that Ms Ladele had not been directly discriminated against because the council had required all registrars to carry out civil partnership duties and so Ladele had not been treated less favourably. The Employment Tribunal Appeal accepted that the council's requirement that all registrars perform civil partnerships could potentially amount to indirect discrimination because it placed Ms Ladele at a particular disadvantage when compared to those who did not share her religious beliefs. However, the requirement was justified as it was a proportionate means of achieving the legitimate aims of promoting equal opportunities and tackling discrimination. In addition the Employment Tribunal Appeal found that the council's actions, while at times insensitive, did not constitute harassment on grounds of religion or belief.

The Court of Appeal considered the effect of the Equality Act (Sexual Orientation) Regulations 2007 which make it unlawful to discriminate on grounds of sexual orientation in the provision of public services. The Court of Appeal found it would have been unlawful discrimination under the 2007 Regulations for Ms Ladele to refuse to perform civil partnership ceremonies. The council, therefore, was not only entitled but obliged to insist on her performing those duties.

Case 2: Mr Mitchell v Strathclyde Fire and Rescue

A Christian fireman who was among a group of firefighters disciplined for refusing to hand out fire service leaflets at a gay pride march settled his religious discrimination claim before it reached an employment tribunal. Mr Mitchell was one of nine firefighters at a Glasgow fire station who refused to attend a gay pride march, with some claiming that they were too embarrassed to attend in uniform and others saying that their presence would be contrary to their moral beliefs. They received a variety of disciplinary sanctions, from demotion to written warnings. They were also ordered to attend diversity training.

Strathclyde Fire and Rescue has confirmed that it reached a settlement with Mr Mitchell in relation to his religious discrimination claim, with an apology to him and agreement to prevent him from discussing the case being part of the deal. The case highlights the direct conflicts that can arise between legal protection on grounds of faith or belief and sexual orientation. It shows that employers must tolerate belief and not subject staff to disadvantage because of their faith or belief or sexual orientation unless it is justified. Where religion or belief conflicts with the requirements of the job, an employer may be able to justify the requirement.

Case 3: Mr MacFarlane v Relate

A relationship counsellor who refused to offer sex therapy to gay couples lost his unfair dismissal appeal (Peacock, 2009). The marriage guidance service Relate dismissed counsellor Gary MacFarlane after he said he could not do anything to promote gay sex. He alleged Relate had refused to accommodate his Christian beliefs. Mr MacFarlane, a former church elder, was appealing on the grounds of religious discrimination at the Employment Appeal Tribunal.

He started training with Relate in May 2003 and said he enjoyed good relationships with clients and colleagues. Mr MacFarlane was suspended in October 2007 after meetings with his manager, in which he claimed he was asked to state his views regarding same-sex couples. After the suspension was lifted he said he was labelled a 'homophobe' and, following a further disciplinary hearing, was dismissed from his job. The tribunal dismissed Mr MacFarlane's claims of harassment.

Ms Tyler, from Relate, commented, "Relate's trusted service relies on making sure that all members of society are able to access respectful and professional counselling and sex therapy. Relate is committed to supporting all religious beliefs working within Relate. The appeal judgement validates Relate's commitment to equality of access to our services" (Peacock, 2009).

The tribunal accepted Mr MacFarlane was not dismissed because of his Christian belief but because Relate believed he would not comply with the policy and requirement of his role. It found that it was a proportionate means of achieving the legitimate aim of providing a full range of counselling services to clients regardless of their sexual orientation. This case, and the Ladele case, show that employers can give priority to customers' needs and place emphasis on having trust and confidence in their staff to deliver a service that is free from discrimination.

Case 4: Apelogun – Gabriels v London Borough of Lambeth

In this case an employee of Lambeth Council, Mr T. Apelogun-Gabriels, a Christian, was dismissed in February 2006 by the London Borough of Lambeth after distributing a range of biblical texts to a work-based prayer group and other ‘interested parties’ (Lambeth Unison News, 2009). He used a search mechanism on a CD of the Bible to locate, download and print out a range of quotes, and distributed the literature across the workplace. The extracts were considered to be homophobic by his employer. The Employment Tribunal dismissed Mr Apelogun-Gabriel’s claims for direct religious discrimination and unfair dismissal, finding that it was his conduct rather than his religious beliefs that was the cause of his dismissal.

The Employment Tribunal stated that the “material ... on any view was totally hostile to those of a homosexual sexual orientation”, and the fact that the employer provided a prayer room showed that it did not seek to discriminate on grounds of religion or belief. The tribunal concluded that a non-Christian who distributed similar literature would have been treated in a similar fashion and that it was the complainant’s conduct in distributing homophobic literature which was the reason for his dismissal, not his religious beliefs.

This is an important case on the dividing line between religion or belief and sexual orientation discrimination. It makes clear that tribunals will be reluctant to give latitude to homophobic actions apparently based on the religious beliefs of the perpetrators. It is an example of the delicate balancing act between religion or belief and sexual orientation discrimination. Equal opportunities policies should take account of both. However, clashes between the two will cause difficulties. Many trade union representatives and employers will be inclined to treat any homophobic behaviour with the utmost seriousness and will examine with scepticism claims that it is protected by the religion or belief regulations. The outcome of Apelogun-Gabriels should encourage them that that is the right approach, but situations may arise in which finding the right balance between the two is more difficult.



The Forum for Sexual Orientation and Gender Identity in Post-School Education (The Forum)

The Forum for Sexual Orientation and Gender Identity Equality in Post-School Education (The Forum) was established in 2007. The Forum brings together post-school education sector partners to ensure a coordinated approach to sexual orientation and gender identity equality within the sector.

The Forum's vision is for a post-school education sector where:

- all learners and staff (actual and potential), regardless of their actual or perceived sexual orientation or gender identity, are treated with dignity and equal respect and are enabled to realise their full potential
- systematic action is undertaken to eliminate all forms of discrimination, harassment and bullying around sexual orientation and gender identity
- sexual orientation and gender identity equality are widely and consistently promoted alongside other equality strands, such as race, gender, disability, religion or belief and age, and embedded within a comprehensive equality action plan.

The Forum has identified the following twelve steps as its priorities in tackling discrimination and promoting equality for lesbian, gay, bisexual and transgender staff and students in post-school education.

1. An explicit and well-publicised commitment to tackle discrimination on the grounds of sexual orientation and gender identity, including promotion equality for lesbian, gay, bisexual and transgender staff and learners.
2. Specific policy, procedure and action against homophobic, biphobic and transphobic bullying and harassment.
3. Tangible action to increase the visibility of lesbian, gay, bisexual and transgender lives in education.
4. A senior manager to lead on developing sexual orientation and gender identity equality.
5. Training for all staff and learners on sexual orientation and gender identity equality, including legislation and standards of behaviour.
6. Information on sexual orientation and gender identity equality in staff and student induction.
7. Incorporation in policies and procedures of relevant agreements on sexual orientation and gender identity equality, such as that between the education unions and the Association of Colleges.
8. Involvement of staff and students' unions in the promotion of sexual orientation and gender identity equality.
9. Clear procedures for raising concerns about issues relating to sexual orientation and gender identity.
10. Inclusion of sexual orientation and gender identity equality in single or full set of equality schemes.
11. Funding and development of strand specific equality action groups, lesbian, gay, bisexual and transgender support groups for staff and learners and other forms of organisation and support.
12. Incorporation of lesbian, gay, bisexual and transgender learner issues into institutional improvement programmes.

Stonewall recommendations

The following are the ‘top ten tips’ taken from guidance produced by Stonewall: *Religion and sexual orientation – how to manage relations in the workplace* (2009: 32-33).

1. Acknowledge that it might be a problem – organisations that recognise that there could be potential opposition to sexual orientation equality have developed plans to counteract it. By thinking ahead, they have found it easier to respond when a problem has arisen.
2. Develop clear strategies – all employees, service providers and suppliers should abide by diversity and equality policies that include sexual orientation. Equality managers are able to point out how behaviour deviates from these policies.
3. Decide where the line is, and be robust about it – decide in advance what constitutes reasonable behaviour from all staff. Identify what responsibilities fall to all staff and how to respond if a member of staff refuses to fulfil those duties.
4. Get senior staff involved – senior support for any position is essential if managers are going to be confident about challenging unreasonable behaviour. Organisations must be consistent in their approach.
5. Communicate strategies and explain them – opposition sometimes comes from a lack of understanding. Ensure all staff understand why sexual orientation strategies are in place, and how they might be implemented.
6. Check job descriptions – some staff might think they do not have to carry out certain tasks or responsibilities if this is not included in their job description. Ensure that all job descriptions are compatible with equality and diversity strategies.
7. Bring groups together – organisations that encourage groups of people such as lesbian gay and bisexual gay staff and people of faith to work together find that working relationships improve across the organisation. Identify opportunities for joint working.
8. Treat all parties with dignity and respect – even if a member of staff seems to be acting in a discriminatory way, treat them with dignity and respect. Find ways to solve the problem, rather than excluding or discriminating against the individual.
9. The importance of mediation – bring in other parties in to help if two parties are struggling to find common ground. Mediation and training is often more effective in the long term than disciplinary action.
10. Using informal processes – if necessary. However, be prepared to use formal disciplinary proceedings. Ensure that all policies and practices are robust.



Skills for Learning Professionals

Lifelong Learning UK

BELFAST

2nd Floor, Midtown Centre, 25 Talbot Street, Cathedral Quarter,
Belfast, BT1 2LD
Tel: 0870 050 2570 Fax: 02890 247 675

CARDIFF

Sophia House, 28 Cathedral Road, Cardiff, CF11 9LJ
Tel: 029 2066 0238 Fax: 029 2066 0239

EDINBURGH

CBC House, 24 Canning Street, Edinburgh, EH3 8EG
Tel: 0870 756 4970 Fax: 0131 229 8051

LEEDS

4th Floor, 36 Park Row, Leeds, LS1 5JL
Tel: 0870 300 8110 Fax: 0113 242 5897

LONDON

Centurion House, 24 Monument Street, London, EC3R 8AQ
Tel: 0870 757 7890 Fax: 0870 757 7889

Information and Advice Service: advice@lluk.org

www.lluk.org

