



CHILDREN AND YOUNG PEOPLE SERVICE

SEXUAL ORIENTATION GUIDANCE ON AVOIDING DISCRIMINATION

Executive Summary

With effect from 1st December 2003 it is unlawful to discriminate against employees because of their sexual orientation. The new law protects all employees from discrimination whether they are gay, lesbian, bisexual or straight. Kirklees may be liable and ordered to pay compensation if it fails to take reasonable steps to prevent discrimination from happening.

The council already has a well developed framework of policies and procedures supporting equal opportunities. As such a lot of advice in these guidelines will create few changes, but will build on and underpin current good practice in these areas.

There are plenty of sound business reasons for preventing discrimination on the grounds of Sexual Orientation.

They include:

- Improved productivity; maintaining strong policies against discrimination and harassment and providing equal benefits can alleviate personal stress and keep employees fully focused on work, thus avoiding tensions that can detract from effective service delivery, happy employees work harder!
- Increased talent pool; be more attractive to talented and skilled job seekers from the lesbian, gay and bisexual communities, thus widening the pool of potential recruits
- Reduced turnover; aid in retention of high quality employees, and hence save on expensive recruitment and training costs.
- Avoiding adverse publicity and legal costs; Avoiding potentially expensive legal costs related to claims being made against the Council at employment tribunals - there is no upper limit to the amount of compensation the Council may be ordered to pay.

The main issues concerning the new legislation include;

- Recognition that leave arrangements are equally available to same sex couples
- Confidentiality and record keeping, particularly with issues concerning disclosure of an employee's sexual orientation
- Sensitivity, (e.g. when dealing with personal problems), by their very nature, sexual matters are private and confidential, many people do not share such information with their managers and colleagues
- Language, using inclusive language when arranging family social activities for employees (e.g. you can invite a partner or guest).

It is important to encourage a culture where employees of all sexual orientations feel welcome and safe in their workplace and the dignity of all should be respected.

Introduction

Kirklees Council values the Lesbian, Gay and Bisexual community it serves and the contribution of its Lesbian, Gay and Bisexual employees

Kirklees Council's Corporate Equality and Diversity Policy states that "The Council will: -

- *Apply fairness and equality of opportunity for all*
- *Comply with all relevant equality legislation and codes of practice*
- *Anticipate changes in legislation and practice and work within the spirit of such legislation before it is introduced*
- *Recognise the effects of discrimination based on race, gender, marital status, gender identity, disability, age, religious belief, sexual orientation, responsibility for dependants, social class, trade union or political activity etc, and will act to eliminate such discrimination."*

Fairness at work and good job performance go hand in hand. Tackling discrimination helps to attract, motivate and retain employees and enhances the Council's reputation as an employer. Eliminating discrimination helps everyone to have an equal opportunity to work, to develop their skills and achieve their potential.

From 1st December 2003, when the Employment Equality (Sexual Orientation) Regulations come into force, it will be unlawful to discriminate against employees because of their sexual orientation. These guidance notes aim to assist Kirklees managers in meeting the Council's commitment and to prevent deliberate or inadvertent discrimination.

This guide describes the Regulations and gives guidance on good employment practice. A lot of the good practice in this guidance will be familiar from existing advice on avoiding sex, race and disability discrimination.

The new regulations should pose few difficulties where people are treated fairly and with consideration.

What the New Regulations Say

Within the Regulations, Sexual orientation is defined as:

Sexual Orientation towards persons of the same sex (lesbians and gay men).

Sexual Orientation towards persons the opposite sex (heterosexual),

Sexual Orientation towards persons the same sex and opposite sex (bisexual).

The new laws offer protection to employees whatever their sexual orientation.

These Regulations apply to employment – including recruitment, terms and conditions, promotions, transfers, dismissals and vocational training. They make it unlawful on the grounds sexual orientation to

- Discriminate directly against anyone - that is, to treat them less favourably than others because of their actual or perceived sexual orientation. For example it is unlawful to
 - Decide not to employ someone
 - Dismiss them
 - Refuse to offer them training
 - Deny them promotion
 - Give them adverse terms and conditionsbecause they are, or are thought to be lesbian, gay, bisexual or heterosexual.
- Indirectly discriminate against anyone i.e. to apply a criterion, provision and practice which disadvantages people of particular sexual orientation without good reason.
- Subject someone to harassment. Harassment is unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. Harassment because of an individual's (real or perceived) sexual orientation could include
 - Anti-gay jokes intended as "banter" or demeaning emails
 - All types of abuse
 - Innuendo
 - Threats of "outing"
 - Physical assaults
 - Isolation because of real or perceived sexual orientation.
 - Other behaviour, which is not with malicious intent but which is upsetting
 - harassment of an individual because they associate with someone of a particular sexual orientation
- Victimise someone because they have made or intend to make a complaint or have given evidence against someone else in relation to a complaint of discrimination on grounds of sexual orientation
- Discriminate against someone, after the working relationship has ended (e.g. in references).

Exceptions may be made in very limited circumstances if there is a genuine occupational requirement for an employee to be of a particular sexual orientation in order to do the job (See [FAQ](#) section for further details).

If discrimination or harassment does occur in the workplace, liability will fall on both the Council as the employer and on any employee who is found to have acted in a discriminatory way. Once the tribunal considers there could be a case for discrimination or harassment, the burden of proof lies with the Council and employee to prove that she/he did not commit an act of discrimination and harassment.

In order to meet its duties under regulations the Council will:

1. Further integrate sexual orientation equality into the Local Government Equality Standard
2. Incorporate lesbian, gay and bisexual issues into the proposed Corporate Equality Plan
3. Ensure that management sends positive messages on sexual orientation to the workforce.
4. Review the local terms and conditions to ensure that wherever possible same sex partners have equal rights and access as heterosexual partners.

Recruitment

In order to ensure that the Council recruitment and selection procedures support equal opportunities for lesbian, gay, bisexual job seekers the Council will:

- ✓ Advertise jobs widely using wide interest publications
- ✓ Appoint on the basis of ability and experience and avoid questions pertaining to marital status or external relationships unless it is pertinent to the protection of vulnerable clients.
- ✓ Make recruitment decisions based on the candidate's ability to fill the role and not on assumptions about who will and will not fit in
- ✓ Not take into account unrelated criminal convictions which are no longer unlawful (such as consensual adult gay sex). This is unlikely to have any bearing on the individual's skills and suitability for the job or training advertised.
- ✓ Ensure that opportunities for promotion and training are known to all staff and available on an equal basis
- ✓ Work within the Council's Code of Practice on Recruitment and Selection.
- ✓ Not discriminate, harass, or victimise someone because of his or her (real or perceived) sexual orientation following the end of a working relationship, or include in any reference information on the person's sexual orientation.

Roles and Responsibilities

Managers' responsibilities

- Training is provided through briefings on the Corporate Equality & Diversity Policy & through the Dignity at Work Policy to ensure that employees understand what behaviours will now be expected from employees, with particular emphasis on creating a culture and environment that is free from harassment. These policies are also referred to in induction courses for all new employees. It is a manager's responsibility to make these policies available to their employees & discuss them at team meetings or one to one sessions. Managers can arrange detailed briefings and training for their teams/service if they require them.

- Managers should make strenuous efforts to reassure employees of confidentiality of procedures and information management systems. Personal information should be maintained in the strictest confidence. Managers may forget that even basic information such as a partner's name is confidential, or they may assume that it is common knowledge.

Managers should work towards creating a safe environment for all employees including lesbian, gay and bisexual employees by:

- Ensuring the working environment is free of discrimination, including harassment, victimisation and bullying.
- Making it clear to staff that discrimination is unacceptable and will be treated as a serious matter and may lead to disciplinary action.
- Dealing promptly and thoroughly with any complaints of discrimination including harassment, victimisation and bullying.
- Ensuring service users are aware that they do not have the right to refuse service from lesbian, gay and bisexual employees.
- Working towards enabling lesbian, gay and bisexual employees at all levels to feel safe in being open about their sexual identity.

All employees' responsibilities

All employees should be aware of the Equality and Diversity policy. In addition, they should be aware of the impact of their behaviour on others. Employees should therefore:

- Challenge prejudice and discrimination whether or not lesbian, gay and bisexual employees are known to be present.
- Avoid inappropriate language, behaviour and making assumptions based on stereotypes.
- Avoid making the assumption everyone is heterosexual until proven otherwise.
- Have a responsibility to ensure that they work within the Council's Equality and Diversity Policy and the Dignity at Work Policy

Language

When writing and speaking about sexual orientation matters, care should be taken to include positives messages. It is not possible to give a definitive list of acceptable and unacceptable terms, as language is a living and changing thing, also much depends on context. However there are a few simple points to note:

- Language used should be inclusive not exclusionary, for example avoid the use of statements such as 'husbands and wives are welcome' instead use terms like 'partner or companions' to make people feel included.
- Say what you mean, if you are talking about sexual orientation words such as heterosexual, bisexual, lesbian and gay are generally accepted.
- Lesbians & gay men rarely use the word 'homosexual' about themselves. However it is acceptable in formal documents, but probably best not in an informal context.

- Other council policies may refer to sexuality or sexual orientation- they mean the same. These guidelines use the word 'sexual orientation' as its use is becoming increasingly common.

Benefits

Same sex couples are entitled to the same benefits as unmarried opposite sex couples including:

- staff discounts & allowances;
- all leave arrangements including parental leave, adoptive leave, paternity leave and compassionate leave;
- pension rights, the Councils' pension scheme gives all employees the right to nominate a partner for their death grant, however the new regulations do not give lesbian, gay and bisexual employees the same pension rights as a married couple. This is set to change through the government's new Civil Partnership Bill which is expected to give same sex couples similar pension rights to married couples;

Importance of confidentiality

By their very nature, sexual matters are private and confidential. Although some people are comfortable talking about their partner, many people do not share such information with their managers and colleagues. They may find it very difficult to make a complaint or be fearful that by making a complaint they will be "outed" in the workplace. Services need to make strenuous efforts to reassure staff of confidentiality of procedures and information management systems. Services should;

- keep all personal information about employees private (e.g. their partner's name);
- not assume that all staff are aware of an employee's sexual orientation – it may not be common knowledge;
- make sure personnel records are securely stored and anyone with access treats them confidentially;

Sensitivity

As well as confidentiality, sensitivity is needed when sexual orientation issues arise particularly when:

- dealing with complaints;
- a colleague comes out (see FAQ section for further details);
- monitoring by sexual orientation, (this is a particularly sensitive issue, see Monitoring section for further details);

Services are encouraged to consider whether custom and practice respects the sensitivity of individuals' sexual orientation and the importance of maintaining a high level of confidentiality. Employees of all sexual orientations should feel welcome and safe in their workplace and the dignity of all should be respected.

Monitoring

The Council recognises the value of monitoring Sexual Orientation because:

- It reassures lesbian, gay and bisexual people that sexual orientation issues are on an equal footing to other equality issues.
- It demonstrates to lesbian, gay and bisexual people that the policy is inclusive and striving to make a real difference.
- It demonstrates within the Council that the equality policy is reflective of the whole community.
- It can support a culture change (services may find it helpful to contact ACAS or Employers' Organisation on this issue).
- It is vital to know how effective our efforts to engage with the lesbian, gay and bisexual community are as well as assisting the Council to show what level of impact the policy is achieving.
- It acts as a signal to tribunals that managers take their responsibilities to the regulations seriously.
- Although there is no legal requirement to keep information on how employees groups are made up it is generally considered good practice, underpinning the success of equality policies.

The following action will therefore be taken:

- Monitoring complaints of harassment on the grounds of sexual orientation.
- Monitoring recruitment by sexual orientation, applicants will be invited to declare their sexual orientation if they so wish.
- Collating and analysing information from exit interviews to see if there are lessons for the Council in terms of managing diversity.
- Monitoring grievance and disciplinary cases by sexual orientation where the case revolves around this as an issue.
- Each service will decide where it is appropriate to monitor their service delivery by sexual orientation.

Data protection issues

The Data Protection act 1998 provides protection for employees by assuring them the info they provide will be treated confidentially and no personal information will be shared by any other party (for more details please see the Council's web site at <http://website/community/voluntaryorgs/kinfoDetails.asp?GroupID=715>).

APPENDIX 1- Frequently Asked Questions

Q. Do managers have to do anything new or different when the Employment Equality (Sexual Orientation) legislation comes in?

A. Managers should ensure that sexual orientation is included in their Service's Equality and Diversity policy and action plan. Employees need to be made aware (through training, notice boards, circulars, contracts of employment etc.) that it is not only unacceptable to discriminate, harass or victimise someone on the grounds of sexual orientation, it is also unlawful. Managers should also make it clear that they will not tolerate such behaviour. Employees should know what to do if they believe they have been discriminated against or harassed, or if they believe someone else is being discriminated against or harassed. This should form part of induction and Personal Development Review (PDR).

Q Do these Regulations cover all employees?

A. The law applies to all employees- that is anyone who applies to the Council for work, or who already works for the Council – whether they are directly employed, on a casual contract or are an agency employee. Managers are responsible for the behaviour of their employees towards an individual working for someone else but on their premises, for example someone from another organisation repairing a piece of your equipment. Employees are sometimes harassed by third parties, such as customers or clients. Managers have a responsibility to protect their employees from such harassment and should take steps to deal with actual or potential situations of this kind.

Q. How will we know if we are discriminating inadvertently?

A. Individuals, or their trade union, will usually tell the manager, particularly if they are able to create a culture whereby employees feel comfortable in sharing such information. It can be helpful for Services to have a designated individual to whom people can go in confidence. The Equality and Diversity impact assessment process will help think through and test whether any Service activity impacts on sexual orientation.

Q. Are employees entitled to claim time off to deal with emergencies involving same sex partners?

A. All Council employees are entitled to [compassionate leave](#) in the case of death or illness of a dependent or close family member including a same sex partner. [Time off for dependants](#) (unpaid leave) is also available in some circumstances (click relevant Intranet links for further details).

Q. No one in my Service has ever complained of discrimination or harassment so I don't need to do anything new, do I?

A. People do not always feel able or confident enough to complain, particularly if the harasser is a manager or senior officer. Sometimes they will simply resign. One way to find out is to undertake exit interviews when people leave and to include the question of whether they have ever felt harassed or discriminated against in the workplace.

Discrimination includes harassment which can take place without management being aware of it. Managers should make sure all their employees understand that harassment means any unwanted behaviour that makes someone feel either intimidated, degraded, humiliated or offended and that includes teasing, tormenting, name calling and gossip and it applies whoever the perpetrator may be. The victim's perception of the effect of the behaviour is also important. Services should take all possible steps to make sure employees understand that they and their management teams will not tolerate such behaviour and that they will deal with whoever is causing the problem.

Q. What about transgender people?

A. Gender reassignment is a separate issue and unrelated to sexual orientation despite a general misunderstanding that the two issues are part of the same picture. It is unlawful to discriminate against or harass anyone on the grounds that the person intends to undergo treatment to change their sex, or is undergoing treatment to change their sex, or has undergone such treatment. These issues are covered by the Sex Discrimination (Gender Reassignment) Regulations 1999. [Guidance](#) is available on the Intranet.

Q. An employee has made a complaint of harassment, which involves an inaccurate perception of their sexual orientation. Is this covered by the law?

A. Yes, any harassment based on sexual orientation is covered by the Regulations. An employee harassed by their colleagues or manager on an inaccurate suspicion of or speculation about their sexual orientation has grounds for complaint and may take their case to Employment Tribunal if the Council fails to deal with the matter in a timely and proper manner.

Q. What should employees do if a colleague 'comes out'?

A. When a colleague 'comes out', the issue must be handled sensitively. It is important to recognise that knowledge that an individual is gay or lesbian or bisexual is not license to communicate that knowledge to others. Such action could lead to difficult situations with colleagues, family and members of the public.

Q. Can lesbians, gay, and bisexual employees work in residential homes for children and young people?

A. Yes. The new regulations state that the person's sexual orientation is not relevant in deciding whether she or he can do a particular job. Lesbians, gay men and bisexual people can provide skill and experience in residential work in the same way as heterosexual men and women.

Q. Can an exception be made for an employee to be of a particular sexual orientation in order to do the job?

A. Exceptions can be made in very limited circumstances if there is a genuine occupational qualification for a person to be of a particular sexual orientation to do the job. However, it is rare such a situation would arise within the Council where an employee would need to be of a particular sexual orientation in order to do a job.

Q. Can an existing religious employee refuse to work with a lesbian, gay and bisexual employee or client on religious grounds?

A. No. The new regulations are intended to protect people from discrimination not to facilitate it. Any collusion with such a request could encourage a claim of harassment by lesbian, gay and bisexual employees within the definition of harassment under the Regulations. Everyone has the right to be treated with dignity and respect in the workplace whatever their sex, race, colour, disability, age, religion or sexual orientation. Employees don't have to be friends but the Council insists they treat each other respectfully.

If an employee cannot work with all council taxpayers then they cannot do their job. Working with all customers is a requirement of all council posts. Disciplining an employee who refused to work with lesbian or gay employee or client would not constitute unfair discrimination in this case.

Q. Will the regulations have implications on partnerships, contracting and grant giving to other public bodies and organisations?

A. Yes, lesbian gay and bisexual equality issues must not only be considered within the Council itself, but also with all its various partnerships. In the eyes of the public, partners, contractors and sub-contractors are 'representatives' of the Council. Therefore, it is vital that the Council's partnership arrangements reflect the equality standards that the Council demands of its own work.

APPENDIX 2- Glossary of Terms

Age of consent- the legal age when adults may engage in consensual sexual relationships. In 2001 a law fixed the ages of consent at 16 in England.

Direct Discrimination – to treat someone detrimentally and less favourably compared to others because of their actual or perceived sexual orientation.

Genuine Occupational Requirement - A form of discrimination that is allowed where being of a particular sexual orientation is a genuine and determining requirement for a post.

Harassment- unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

Heterosexist- the assumption everyone is heterosexual until proven otherwise.

Homosexual- dated term for lesbians, gay, and bisexual people rarely used by lesbians and gay men, but sometimes used in formal documents.

Homophobic- prejudice towards lesbians and gay men and fear of same sex attraction.

Indirect Discrimination – a provision or practice that everyone has to conform to, but which some groups (e.g. lesbians and gay men) cannot meet too easily.

Sexual orientation- defined in the guidelines as orientation towards persons of the same sex, opposite sex or both sexes; in common language – lesbian, gay, straight or bisexual.

To come out/be out - to be open about your own sexual orientation.

To out someone- to reveal another person's sexual orientation. 'Outing' someone without their clear permission is inappropriate and a breach of that person's privacy. It may constitute harassment and/or a breach of the Data Protection Act and Human Rights Act.

Transgender/Transsexual – a person whose perception of their own gender differs from the sex they were assigned to at birth.

Victimisation –a specific term in law to mean discrimination against a person because they have made a complaint (or intend to make a complaint) or have been a witness (or intend to be a witness) in another person's complaint.

Guidelines for Preventing Discrimination on the grounds of Sexual Orientation

What is discrimination on the grounds of Sexual Orientation? – In December 2003, an Employment Directive came into force. The new law means that it will be unlawful to treat people less favourably because of their real or perceived sexual orientation towards persons of the same sex, of the opposite sex, or both sexes i.e. it covers lesbians, gay men, heterosexuals and bisexuals.

What will I use the guidelines for? – They will enable managers to take prompt and effective action to make sure discrimination does not occur. Discrimination includes unfair treatment in recruitment, terms of conditions, promotions, transfers, dismissals and vocational training.

What procedures fall under the guidelines for Preventing Discrimination on the grounds of Sexual Orientation?

- Corporate Equality & Diversity Policy
- Dignity at Work Policy
- Code of Practice on Recruitment and Selection
- Review and Development Process
- All Leave arrangements
- Local Terms and Conditions

How does preventing discrimination on grounds of the Sexual Orientation help manage my service delivery? – There are plenty of sound business reasons for preventing discrimination on the grounds of Sexual Orientation.

They include:

- Improved productivity; maintaining strong policies against discrimination and harassment and providing equal benefits can alleviate personal stress and keep employees fully focused on work, thus avoiding tensions that can detract from effective service delivery, happy employees work harder!
- Increased talent pool; be more attractive to talented and skilled job seekers from the lesbian, gay and bisexual communities, thus widening the pool of potential recruits
- Reduced turnover; aid in retention of high quality employees, and hence save on expensive recruitment and training costs.
- Avoiding adverse publicity and legal costs; Avoiding potentially expensive legal costs related to claims being made against the Council at employment tribunals - there is no upper limit to the amount of compensation the Council may be ordered to pay.

KIRKLEES

METROPOLITAN

Action Checklist

I have told my team about the new Sexual Orientation regulations and advised them where to find further details, advice and support	✓
I will challenge any discrimination either direct or indirect against anyone - that is treating someone less favourably than others because of their actual or perceived sexual orientation; or applying of a provision or practice which disadvantages people of a particular sexual orientation	✓
I will ensure harassment does not occur. Harassment is any unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.	✓
I will handle any issues sensitively and will not assume all staff are aware of an employees sexual orientation— it may not be common knowledge	✓
I will prevent and challenge any harassment relating to an individual's (real or perceived) sexual orientation including: Anti-gay "banter" or anti gay jokes or demeaning emails, all types of abuse, innuendo, threats of "outing", any collusion with homophobic comments, and any other behaviour which is not with malicious intent but which is upsetting.	✓
I will not allow discrimination or harassment of an individual because they associate with someone of a particular sexual orientation	✓
I will challenge any victimisation of someone because they have made or intend to make a complaint or have given evidence against someone else in relation to a complaint of discrimination on grounds of sexual orientation	✓
I will protect my employees from harassment (duty of care) by third parties (e.g. customers, contractors, cleaners) and equally protect third parties from harassment.	✓
When recruiting to a post I will review anything in the job specification that might discriminate against someone of a particular sexual orientation	✓
I will appoint on the basis of ability and experience and avoid questions pertaining to marital status or external relationships unless it is pertinent to the protection of vulnerable clients.	✓
I will ensure that opportunities for promotion and training are known to all staff and available on an equal basis	✓
I will hold all personal information about employees confidentially (e.g. their partner's name)	✓
I will use inclusive language when arranging family social activities for employees (e.g. you can invite a partner or guest)	✓
I will ensure that requests for leave such as parental leave, adoption leave and paternity leave and other leave arrangements are equally available to same sex partners	✓
I will not include any mention of an individual's sexual orientation in any reference following the end of a working relationship	✓

H
R
P
O
L
I
C
Y
F
A
C
T
S
H
E
E
T

What competencies will I need to prevent discrimination on the grounds of sexual orientation?

Specific

Promoting Diversity and Challenging Inequality
Recruitment and Selection

Generic

Interpersonal communication
Induction
Working with HR policies
Performance Review and Development

Underpinning Knowledge

1. To prevent discrimination on the grounds of sexual orientation, I will have a sound working knowledge of:
 - the times when discrimination can occur. These include:
 - Recruitment,
 - Training and Development
 - Promotion opportunities
 - Disciplinary and grievance
 - Service delivery
 - Handling personal information
 - the range of leave arrangements available to employees and managers and that these apply equally to same sex partners;
 - the Council's Corporate Equality & Diversity and Dignity at Work Policies;
 - the Council's Code of Practice on Recruitment & Selection;
 - the rationale for preventing discrimination on the grounds of sexual orientation and the benefits to both the employee and the organisation;
2. I am aware of the fact the sexual orientation laws cover heterosexual men & women, bisexual men & women, gay men and lesbians.
3. I will know I can get practical help and guidance from Personnel, Equalities officers, Lesbian, Gay & Bisexual Equality Networks, Lesbian & Gay Organisations (Stonewall and LAGER) and Trade unions.
4. I will know there are more detailed guidelines on the Intranet
5. If harassment does occur I am aware how to address it and prevent its reoccurrence.