# Birmingham City Council Equality Act 2010 Fact sheet

# SEXUAL ORIENTATION EQUALITY

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

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

# WHAT IS MEANT BY SEXUAL ORIENTATION?

The Equality Act 2010<sup>1</sup> defines sexual orientation as sexual orientation towards:

S

sexual orientation covers people from all sexual orientations, including lesbian, gay, bisexual and heterosexual people.

#### WHO IS PROTECTED UNDER SEXUAL ORIENTATION?

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

# WHAT FORM OF PROTECTION DOES THE ACT PROVIDE?

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

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

<sup>&</sup>lt;sup>1</sup> Equality Act 2010 Statutory Code of Practice Services, public functions and associations V:\PSO\Equality Act 2010\Protected Characteristics Fact Sheets\Sexual Orientation\Sexual Orientation Fact Sheet 110914FINAL.doc

(i) Discrimination by Association - e.g. a person is discriminated against or harassed because he or she is associated with another person who has a protected characteristic.

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

Source: EHRC Equality Act 2010 Statutory Code of Practice Employment

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

Indirect Discrimination

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

#### ARE THERE ANY EXCEPTIONS?

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

- a) Membership
- b) Participation in activities undertaken by or on behalf of the organisation or under its auspices
- c) The provision of goods, facilities or services in the course of such activities; or
- d) .5 Tm[(ass)3(o)-2(ci)se 6.64 5BT1 0 0 1 56.64 627.34 Tm[(o)-2(rgan).5 Tm[(ass)3

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

Source: ACAS: A guide for employers and employees Sexual Orientation and the workplace

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

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

Source: Equality Act 2010 Statutory Code Employment

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

The Act contains provisions which enable service providers to take proportionate action to achieve fuller and more effective equality outcomes for members of groups that are socially or economically disadvantaged or excluded, or who otherwise face the consequences of past or present discrimination or disadvantage. T provisions <sup>7</sup>

<u>DO PUBLIC BODIES HAVE A DUTY TO PROMOTE SEXUAL ORIENTATION</u> EQUALITY?

### Resources and Contacts:

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

http://en-gb.facebook.com/pinkshieldbham?sk=info&filter=2