



**University and College Union**

**Sexual Orientation and Gender Identity  
Equality**

**International Working**

## **International Working: Sexual Orientation and Gender Identity Equality Issues**

This guidance is complementary to the UCU HE negotiating guidance on overseas working. The aim of this guidance is to draw out points specifically relevant to staff who identify as lesbian, gay, bisexual and / or trans following a considerable number of requests for such guidance from members and UCU branches.

### **Context**

UK universities are increasingly involved in the delivery of a wide spectrum of educational activities internationally with franchises and campuses in many different countries. The number of students studying for UK degrees in other countries is also increasing.

Branch campuses employing staff from the UK as well as recruited locally constitute a small but growing proportion of UK universities international provision. The number of branch campuses established by UK universities almost doubled between 2009 and 2014 from 13 to 25.

Homosexuality is illegal in many of the countries where HEIs operate either having procured the services of local providers or through establishing branch campuses.

The legal standing for trans people varies considerably and trans people experience a great deal of hostility.

A few facts about the international legal situation are provided by the International Lesbian and Gay Association, ILGA (ILGA - May 2014).

There are:

- 78 countries where homosexual acts are illegal.
- 5 countries, and parts of 2 countries, where homosexual acts carried the death penalty.

- 4 countries where it is not entirely clear whether the death penalty was being (as at May 2014) implemented.
- 14 countries where marriage is open for same sex couples.
- 11 countries where same-sex couples have nearly the same rights of marriage through partnership legislation.

Under the Equality Act 2010 the legal position of homosexuality, including same-sex partnership rights, is a consideration for each and every UK HEI in all their policies and practices, including procurement. HEIs are legally obliged to implement the public sector equality duty specified in the Equality Act 2010. The public sector equality duty which applies to HEIs stipulates that in all policies and practices organisations should:

- have due regard to the need to eliminate discrimination.
- advance equality of opportunity.
- foster good relations between different people when carrying out their activities.

The Equality Act covers nine protected characteristics including gender reassignment, marriage / civil partnership and sexual orientation. Organisations, including Higher Education Institutions (HEIs) are required to demonstrate that they have given due consideration to the equality duty prior to development of policy and initiation of practice. They also need to consider the impact of pre-existing policies and practices in order to make adjustments to mitigate against negative impact. Such adjustments should be made in ways that are reasonable within the wider functions of the organisation.

## **Organising LGBT members**

### **Gender Identity**

The LGBT acronym has emerged as a result of these different groups of people having histories of socialisation and more recently organisation. Over the past twenty years or more the majority of trans people have allied with the LGB community and been welcomed by many organisations. Hence LGBT has emerged as an organising term. One of the risks of this shorthand term is that it is easy to forget the component parts. So it is important to always remember that the term LGBT has within it many different identities and also differing rights across the world.

Gender identity goes beyond the protected characteristic of gender reassignment in the Equality Act. Gender reassignment covers those people who wish to change their sex. It is widely recognised that this is a small number of the people who challenge the traditional binary classification of sex into male and female categories. The term gender identity encompasses this broader group. In this guide when referring to legal rights we refer to gender reassignment but when organising for equality we refer to gender identity.

Lesbian, gay, bisexual and trans people encounter marginalisation, discrimination and prejudice in many countries. One way of coping with sexual orientation discrimination has been to 'put up and shut up' which has increased levels of invisibility. Therefore there may be many more lgb people than is officially known. Trans people have often coped by not coming out and also those who have transitioned may well not be out as having changed their gender. This can result in cultures of silence and invisibility which can be experienced as repressive and discriminatory. Sustaining and advocating such cultures is contrary to the values of UCU and the trade union movement. We need to challenge assumptions that there are no people of lgb sexual orientation or trans identities within organisations as this can lead to a lack of action on ensuring LGBT rights.

## **UCU Policy**

UCU calls for at least implementation of existing legislation. To assist with this action UCU has produced an HE negotiating pack including the Overseas Working Guidance. UCU values equality at the core of all policy and practice and looks for robust provisions and measures.

Equality law applies to all policies and practices within an organisation and in procured services. HEIs are covered by the Equality Act 2010 and so should include both sexual orientation and gender reassignment within an organisation's equality policy. That policy should explicitly prohibit discrimination and harassment in all areas of the life of the organisation.

Applying a strong equality policy in all international operations helps an organisation meet the equality duty. It means that in some countries UK organisations will be exceeding the local legislation. If this policy is applied globally an organisation's employees can expect the same standard of treatment irrespective of their sexual orientation or gender reassignment status regardless of where they are employed across the world.

Staff employed on UK contracts have recourse to UK equality law wherever they are working because UK organisations are subject to UK equality law as it applies in each nation. Equality law applies differently between England, Northern Ireland, Scotland and Wales. The maintenance of these equality standards by those who are providing these HEI services on behalf of a UK organisation helps ensure that equal treatment is realised.

Any provider of franchised services may employ people locally on local contracts which operate outside the scope of agreements with UK organisations. People employed on these contracts may have different terms and conditions than those employed on UK contracts.

Organisations may have policies that cover international assignments from short term business trips to postings over several years. Having such a policy could help the organisation think through the various issues related to international working. The

UCU HE Overseas Working guidance should be used to help construct a robust policy.

For longer terms postings there may be some substantial issues for lgb and / or trans staff. It may be that these issues cannot be addressed in a way that ensures equality and that may potentially have some impact on opportunities for career development. It is important, therefore, that employers seek ways that can ensure there is no detriment to career development particularly where international travel is not an integral part of the job on entry.

Relocation of same-sex couples and families can be complex and have significant negative impact compared to opposite sex partners and families. Relocation and / or international working policies should be clear on what support the organisation can provide. Visas, posts in the international provision, and health insurance are examples of provisions that can be made for the partners of employees who are posted internationally. An incident like a traffic accident, for example, can leave an lgb and / or t staff member exposed to discrimination when they are most vulnerable. In such a situation, it would be appropriate for the employer to take action which ensures that employees are supported. For example it is possible that the health insurance provided by the employer is one that enables departure from a country for medical treatment.

Risk assessment or equality impact assessments could be useful mechanisms in revealing to the employer any potential negative impact of international assignments of any length. Such assessments should include consideration of cultural and legal environments of the countries involved.

### **What should the employer be doing?**

The employer has a duty of care which it owes to an employee. The duty of care should mean that staff are enabled to realise the terms of their employment in a safe system of working and with adequate materials.

The focus of the duty is the work that the employee is employed to undertake. Except for employment related legislation, the employer bears no responsibility for

the laws of the land in which the work is undertaken. As a general rule, if an employee breaches the criminal code in the course of an activity that has no connection with their employment, the employer is unlikely to be found to have been in breach of its duty of care.

However, if an employer intends to place an employee in a country where that employee would be at risk for reasons of their sexual orientation and / or gender reassignment status, it would be part of the discharge of the employer's duty of care to provide a safe system of working by conducting a risk assessment. In the first place this would mean ensuring that the employee was familiarised with local laws that are different from those in force in the UK. Where international working might pose risks of discrimination or serious harm, the employer should discuss the situation in advance with staff who might be at risk.

The employer should not exclude staff from international working, but staff should have a right to decline. As a general principle, international work should be voluntary unless clearly stipulated as an essential element of the job description and employment contract. Thus where an international posting is proposed, an employee should be able to decline the opportunity without having to provide a justification.

## **Risk Assessment**

In the event that the employee wishes to consider international employment, it is appropriate for the employer to undertake a risk assessment prior to international posting. For various reasons, employees may understandably not wish to disclose personal information about sexual orientation and/or gender identity to their employer. However, it is important to note that an employer that carries out a risk assessment is not likely to be liable to the employee in the event of discrimination encountered in the course of employment overseas if the sexual orientation/gender identity of the employee has not been disclosed to them, assuming the individual knew before the posting.

For this reason, UCU encourages members to provide information about all potential sources of risk relevant to an international posting during such assessments.

Employers should conduct such assessments under conditions of strict confidentiality and in a manner that is sensitive to the acutely personal nature of the information which may be divulged in these assessments, so as to provide an environment in which employees feel able to participate candidly in the assessment.

Staff should also have the right to return early or withdraw from international working without prejudice to their employment, where they have encountered discrimination. Employers should cover the costs of this where it is agreed by the employer and employee, or proven by the employee in case of a dispute, that discrimination has taken place.

Research, lecturing or other work is often undertaken by staff which is relatively short term as part of an employee's work. These postings may not be based at a particular campus/institution linked with the UK institution but in such cases the principles in this guidance should also apply.

### **What should employees consider?**

There are personal considerations for every employee when making decisions about working or relocating abroad. Longer terms assignments will require greater consideration especially in cases where immigration rules make it difficult to take along a same-sex partner or children, or where there is a real risk that their personal safety might be compromised. Being out at work can significantly assist in discussions about international assignments since employers are then in a clear position to consider the individual's circumstances in relation to the legal and cultural situations in a country where a posting is being considered.

Employees could talk these issues through with union reps and / or supportive managers. If an employee is not out at work, the union equality officer or other rep could be a really significant ally and of course confidentiality should be respected.

Working and / or living in countries where there are cultures hostile to lgb and / or t people can create fear, repression, isolation and potential intimidation which in turn could have negative impact on working performance. Employees should monitor



the impact to avoid being subject to capability or performance management issues.

Staff who are out in the UK may feel pressure to be in the closet in a destination country if the organisation has not made efforts to create a working culture on the international campus that is open to diversity. Employees could consider what their support mechanisms are that could enable them to cope with any repression at and outside of work.

Employees should be aware of the potential dangers of using social media in destination countries. In some countries communications are monitored by state authorities who could be hostile to lgb and / or t people.

It is also advisable that employees find out about the destination country including the situation for LGB and / or T people. That research might also include finding out about any local LGBT support agencies.

#### International Working: Sexual Orientation and Gender Identity Equality Issues – A Checklist

1. Can the employer produce any evidence that the equality duty has been considered in relation to international working arrangements?
2. Does the organisation have an equality policy?
3. Has the organisation referred to the UCU Overseas Working guidance and the general points contained within that? Does the HEI have an Overseas Working policy?
4. Does the equality policy include sexual orientation and gender reassignment / identity?
5. Is the equality policy applied globally?
6. Does the organisation ensure that the equality policy is applied when procuring and / or franchising services?
7. Are the arrangements for procuring and / or franchising services applied to international contracts?
8. Does the organisation have policies that cover international engagements of varying lengths including short and long term assignments?
9. In any overseas/ international working policy, or in the practice of agreeing arrangements with staff, does the employer allow for opportunities to be declined where the uptake of these is not stipulated in the initial job description?
10. Are there arrangements to provide career development opportunities for staff who, for whatever reason, do not take up international working?
11. Are there relocation / international working policies that specify what support the employer will provide and what responsibility the employee has?

12. Where the employer provides health insurance does it have provisions for travel outside of the destination country for hospitalised treatment?
13. Has the employer undertaken a risk assessment on the international contract?
14. Has the risk assessment included cultural and legal issues that could be encountered in the destination country?
15. Is there information provided by the employer about the cultural and legal situation in destination countries they work with?
16. Does the employer provide confidential and personally sensitive ways for the employee to disclose their sexual orientation or gender reassignment status / identity?
17. Does the employee have support networks to help in any circumstances where repression and / or discrimination may be faced? These could include an organisation's lgbt network and if so are there ways of interacting that are secure and will not expose the individual?
18. Is information about the destination country freely available from the employer?
19. Are employees aware of the cultural and legal situations in destination countries that may impact on same sex marriages, families and socialisation?
20. Does information about the destination country include details of lgbt support groups in each country?

#### Resources Section

ILGA (2014)

State Sponsored Homophobia: A world survey of laws: Criminalisation, protection and recognition of same-sex love

[http://old.ilga.org/Statehomophobia/ILGA\\_SSHR\\_2014\\_Eng.pdf](http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf)

[http://old.ilga.org/Statehomophobia/ILGA\\_map\\_2013\\_A4.pdf](http://old.ilga.org/Statehomophobia/ILGA_map_2013_A4.pdf)

Stonewall (2012)

Global Working: Supporting lesbian, gay and bisexual staff on overseas assignments

[http://www.stonewall.org.uk/documents/global\\_working1.pdf](http://www.stonewall.org.uk/documents/global_working1.pdf)

TUC LGBT Equality at Work (2013) 3<sup>rd</sup> edition

<https://www.tuc.org.uk/equality-issues/gender-equality/lesbian-gay-bisexual-and-transgender-rights/lgbt-advice-information>

UCU Overseas Working Guidance

<http://www.ucu.org.uk/overseasworking>

<http://www.ucu.org.uk/circ/pdf/UCUHE247.pdf>

