

Lesbian, gay and bisexual equality at work

Guidance for UCU members and branches

Foreword

This document deals with lesbian, gay and bisexual equality at work. L, G, B organising is often linked, formally and informally, with trans people (hence LGBT). While recognising and supporting this manner of organising, this document cover only sexual orientation as the rights of trans people are recognised in their own right under the Equality Act 2010 (the protected characteristic of gender reassignment). Therefore when this document is about organising it refers to LGBT and when about rights it only refers to L, G and B (sexual orientation).

For detailed guidance on gender identity equality you can read the trans guidance from the Forum for Sexual Orientation and Gender Identity Equality in Post School Education which can be found on the Forum website https://sgforum.org.uk/resources/trans_guidance

This guide highlights some of the issues important to LGB members. We welcome feedback. You can find more information and contact details on the equality pages of the UCU website. https://sgforum.org.uk/resources/trans_guidance

UCU is committed to the representation and visibility of LGBT members throughout the Union. One way in which this is achieved is by having an LGBT members standing committee to which LGBT members are elected at the annual equality conference. UCU also works closely with the TUC, including participation at the annual TUC LGBT conference.

If you are a member and want to be more involved come to the equality conference.

You can get involved with your local branch, find out who your local rep is and talk to them about LGB and/or T issues in your workplace.

If you are not a member and work in the post-school education sector, you can join now at: www.ucu.org.uk/join

UCU is firmly committed to oppose all forms of harassment, prejudice and unfair discrimination whether on the grounds of age, disability, gender identity, race, religion or belief, sex, or sexual orientation.

Introduction

Lesbians, gay men, and bisexuals have become more visible throughout society since sex between two men in private was legalised in 1967. Valuable support for equality and advancing the needs and aspirations of lesbian, gay men and bisexuals has been forthcoming from sections of the wider community. However society at large still promotes the view that heterosexuality is the norm, this is known as heteronormativity. Heteronormativity and heterosexism (action favouring heterosexuality and normative heterosexual lifestyle) results in lesbians, gay men, and bisexuals suffering discrimination and prejudice in many aspects of life, within and outside the workplace. Prejudice and discrimination against lesbians, gay men and bisexuals have for many years been termed 'homophobia'. Homophobia is widespread and can take many forms, from derogatory remarks and insulting 'jokes' to outright physical abuse, and many points in between.

Within the workplace at least some lesbians, gay men, and bisexuals fear that being open about their sexual orientation may lead to harassment from management, colleagues and students.¹ There may also be fear of exclusion from promotion or even of dismissal. Sometimes these fears can be evidenced, other times they are felt but either way they are regarded seriously by UCU and in law as well as by the individual experiencing the feeling of prejudice and discrimination.

¹ Equality Challenge Unit (2009) 'The experience of lesbian, gay, bisexual and trans staff and students in higher education'

1 Equality Act 2010

In 2010 the UK Government brought in the Equality Act covering nine protected characteristics including sexual orientation and gender reassignment. It is the inclusion of sexual orientation equality which of particular interest to lesbian, gay and bisexual people. It is, of course, quite possible that any lesbian, gay, or bisexual person may also have one or more other protected characteristic.

The Equality Act includes the Public Sector Equality Duty which puts a duty on public bodies to implement equality. The provisions include a general duty that public bodies are required to comply with.

Aims of the General Duty

To comply with the general equality duty in the exercise of their functions public authorities must have due regard to the need to:

- **eliminate unlawful discrimination, harassment and victimisation** and other conduct prohibited by the Act
- **advance equality** of opportunity between people who do and do not share a protected characteristic
- **foster good relations** between people who do and do not share a protected characteristic.

2 Organisational culture can support sexual orientation equality

The creation of a culture that supports sexual orientation is crucial and the following can have considerable impact:

- explicit promotion of means by which staff and students can take up cases where they feel they have been subject to any detriment because of their sexual orientation. This may include grievance procedures or dignity at work policies.
- a policy of zero tolerance of homophobia and how it will be dealt with whether the guilty party/parties are staff and/or students.
- demonstrable action taken against the circulation of homophobic material or graffiti.

Branch reps should check that these are in place. If you are a member and have concerns in these areas you should approach your Union, and perhaps an Equality and Diversity manager or some other leader within the organisation who may be able to push some ideas forward.

3 The Forum for Sexual Orientation and Gender Identity Equality in Post-School Education

As a result of UCU action following the 2006 Centre for Excellence in Leadership (CEL) report the Forum for Sexual Orientation and Gender Identity Equality in Post-School Education (The Forum) was established in April 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. This facilitates the sharing and promotion of expertise and good practice.

The Forum recommends the following steps towards meeting this vision. You can take these steps alongside action for other protected characteristics, but sexual orientation and gender identity must be visible within whatever approach you take.

- 1 Publish objectives for sexual orientation and gender identity equality, as part of meeting the public sector equality duty requirements.
- 2 Commit publicly to tackling all forms of discrimination on the grounds of sexual orientation and gender identity.
- 3 Take action to ensure all of the organisation's stakeholders understand their rights and responsibilities in regard to sexual orientation and gender identity equality.
- 4 Take action against homophobic, biphobic and transphobic bullying and harassment, reflecting them in policies and procedures.
- 5 Respond positively to needs and concerns raised in relation to sexual orientation and gender identity by students and staff.
- 6 Take action to increase the visibility of lesbian, gay, bisexual and trans lives in education. Reflect diverse sexual orientations and gender identities within course content, language and visual communications, for example by celebrating Lesbian, Gay, Bisexual and Trans History Month in February.
- 7 Be clear about who is responsible for leading on sexual orientation and gender identity equality. Establish representation for sexual orientation and gender identity equality at all levels in the organisation including governance and leadership.
- 8 Ensure that staff and student inductions include relevant information about sexual orientation and gender identity equality.
- 9 Provide continuous professional development and training about sexual orientation and gender identity equality for all staff and learners. Include expected standards of behaviour and a summary of legislation.
- 10 Involve staff and students' unions in the promotion of sexual orientation and gender identity equality.
- 11 Fund and develop equality groups for lesbian, gay, bisexual and trans staff and learners
- 12 Consider [or 'Give due regard to'] the impact of change and improvement programmes on equality for lesbian, gay, bisexual and trans staff and learners.

4 How can homophobia be challenged?

Homophobia is a serious issue. It has been experienced by many lesbian, gay, and bisexual people in the workplace and in learning environments². Under the 2010 Equality Act harassment is unlawful. Bullying can also be homophobic.

ACAS lists the following as examples of workplace bullying and harassment:

- constantly criticising competent staff, removing their responsibilities, or giving them trivial tasks to do
- shouting at staff
- persistently picking on staff in front of others, or in private
- obstructing professional development/blocking promotion
- regularly making the same person the butt of jokes
- constantly attacking a member of staff in terms of their professional or personal standing
- setting up a person to fail by overloading them with work or setting impossible deadlines
- regularly and deliberately ignoring or excluding individuals from work activities
- ignoring staff views and opinions
- different rules for different people
- criticism and threats
- excessive monitoring
- unrealistic expectations.

The crucial point is that the behaviour is unwarranted and unwelcome by the recipient.

Bullying and harassment need to be dealt with and UCU takes it seriously

Do not ignore it

If you feel that you are being subjected to bullying or harassment do not feel that it is your fault or that you have to tolerate it.

Many people ignore bullying and harassment for fear of being labelled a troublemaker but it is unlikely that the conduct will stop if you ignore it. The bully is often doing this to try and exert control, so silence may be interpreted as acquiescence. Report the action you are concerned about to your Union branch.

Both branch reps and members can take the following steps to prevent and work to mitigate against the effects of bullying

4.1 Check if your institution has a policy on bullying and harassment and read it

Get a copy of your employer's published policy on bullying and harassment or on dignity at work. It should be on their web site – or your local rep will have a copy. Read carefully what it says about all managers' responsibilities, and how concerns should be raised. This agreement or policy should have been agreed with the UCU branch.

If an individual feels unable to directly tackle the person concerned, this does not imply consent to the behaviour nor will it prejudice any complaint that may be brought.

4.2 Get support

If you are being bullied it is important to talk about the problem with a friend, a colleague and UCU representative. Do not hesitate to contact someone even when an incident occurs only once. They may be able to suggest ways of resolving the problem.

² ECU (2009) and CEL (2006) 'Equality and sexual orientation – the leadership challenge for further education.'

4.3 Collect evidence of the bullying or harassment

In logging a case it is important to keep a note of all relevant incidents including dates, times, places. This will be invaluable in proving the case if a complaint is made. Wherever possible get witnesses to provide factual evidence.

If there are no witnesses to an incident, a colleague or representative should be told and a note made. Make sure copies of any relevant documents including emails and other electronic information are kept.

4.4 Find out if the same person is bullying or harassing anyone else

Often a bully will have a history of such behaviour.

Some UCU branches have carried out institution-wide surveys. These can be very effective in demonstrating that there are wider issues which the employer must address – and will make claims more difficult to dispute.

4.5 Make sure a UCU representative is informed

Report a problem with bullying to a branch representative. Even if it is decided not to pursue the case, it is important that the union is aware of any incidents of bullying or harassment.

There will be informal and formal procedures for dealing with the situation. The decision on how to progress the complaint rests with the complainant.

If the person responsible for the bullying or harassment is a union representative, discuss with another branch officer the best way to proceed.

Any discussions will be confidential and further action involving an individual will not normally be taken without their express permission. Nor will the person who is being complained about be given the complainants name without permission.

The branch secretary, branch chair, branch equality officer should be informed in the first instance. In the rare situation where it is felt there is no branch officer that who can be approached, perhaps because they are implicated in the bullying or harassment, the regional office should be contacted.

Members are advised to bring their concerns to UCU first rather than approaching, for example, outside organisations such as the Equality and Human Rights Commission (EHRC).

4.6 Make a formal complaint

If a UCU representative and/or individual cannot resolve the problem by asking the person to stop, a formal complaint should be made; this should then be investigated by management.

If formal disciplinary proceedings are to be taken against the person responsible for the bullying or harassment, evidence will be required. If you are providing evidence it may be difficult to undertake this but it would not be in your best interests for the case to be considered in your absence. The union will support you through this difficult process. Once the complaint becomes formal, UCU should insist that management conducts a risk assessment about how any continued bullying may affect the workplace.

Remember: if bullying persists it is appropriate to insist on treating the bully as a workplace hazard and insisting on a risk assessment. This is particularly the case if it is not an isolated incident and other staff have been bullied.

UCU has published guidance on bullying and harassment which can be found at www.ucu.org.uk/media/pdf/f/0/bully_harass_toolkit.pdf

5 Employee's right to request and/or take leave

5.1 Leave is available when a child is expected, born, or adopted.

Irrespective of sexual orientation the birth mother of an expected or new born child is entitled to 52 weeks maternity leave. This leave cannot be taken before the 11th week prior to the date the child is due to be born. Most birth mothers will qualify for 6 weeks at 90% of full pay followed by 33 weeks at a flat rate which increases with every year of service.

Again irrespective of sexual orientation but dependent on the individual having been in continuous employment for 26 weeks before the qualification date parental leave is available for fathers, whether biological or adoptive; husbands; civil partners; and partners of either sex who live with the mother in an enduring family relationship. This leave is provided at a flat rate for two weeks.

52 weeks adoption leave is available for one of the two adoptive parents whether the parents are of the opposite or same sex. Most of those who qualify for adoption leave will qualify for 39 weeks at a flat rate which increase with every year of service.

Since April 2011 it has been possible for parents to share parental caring responsibility whether the parenting is by birth or adoption. One parent can choose to return to work after taking some leave; the other parent will then be entitled to additional parental leave. The individual claiming additional parental leave must have been in continuous employment for at least 26 weeks at the time of qualification. Additional parental leave can be taken whilst the other parent is ordinarily entitled to maternity or adoption leave, this is between 20 weeks and one year after a child is born or placed for adoption. Most of those taking additional paternity leave will be entitled to statutory additional parental pay.

13 weeks unpaid parental leave is available for those who are birth or adoptive parents; anyone who has or expects to have parental responsibility; and 'commissioning' parents in a surrogacy arrangement once the birth certificate shows them as parents following a parental order. A surrogate parent who is not considered a legal parent is not entitled to any leave but some employers offer flexible leave policies which entitle someone considered the primary caregiver for a child to have a set amount of leave.

5.2 Unpaid reasonable time off for dependents is available for carers of children or adults if the employee is in the following categories

- mother, father, adopter or guardian of a child who falls ill
- spouse, civil partner, partner of, or lives at the same address, as an adult who falls ill.

5.3 The right to request flexible working

The right to flexible working entitles the employee to request their employer to change their terms of employment in relation to hours or times of work and location of work.

The employee must have 26 weeks continuous employment to be entitled to seek flexible working. Employees who are carers are entitled to make a statutory application for flexible working. You can find more information at www.gov.uk/flexible-working/overview

6 Voice and visibility progress equality

UCU is committed to the representation and visibility of LGBT members throughout the Union. One way in which this is achieved is by having an LGBT members standing committee to which LGBT members are elected at the annual equality conference. UCU also works closely with the TUC, including participation at the annual TUC LGBT conference.

6.1 How about disclosure?

There has been a lot of discussion about whether or not to collect data on the basis of sexual orientation. Whilst it is not a legal requirement it can be helpful to know how many lesbian, gay, and bisexual people are working and studying in the organisation and how this relates to the local or national statistics. Many of the same issues apply to sexual orientation as with 'hidden' disabilities and much work may be needed to be done for people to feel safe to disclose/'come out'. UCU advice from the LGBT members' standing committee is that monitoring should be done but it will only be effective if it is well thought through, action is undertaken to accompany monitoring and people feel sure about what they are doing and why.

For more information you can find resources online and through LGB and T community organisations such as the Lesbian and Gay Foundation (LGF) who published '*Everything you always wanted to know about sexual orientation monitoring... but were afraid to ask*' (June 2011)

6.2 How can an institution/branch be welcoming/supportive/active?

Developing a supportive environment is a key tool in achieving good data collection. For example work on disability equality has shown that taking tangible steps to be supportive can increase the amount of reliable information gathered.³ Leadership on equality initiatives

taken by organisational leaders, student leaders, and/or local branch officers can have significant impact. Also mandatory high quality equality training (including sexual orientation) and support for the development of networks such as LGB(T) staff groups may be seen as being significant features of a supportive organisation.

UCU has developed a programme to train reps on how to engage with and support LGBT issues in the workplace. Branch reps can be influential in enabling a supportive workplace to be realised in practice.

The Equality Challenge Unit produced '*Advancing LGB equality: Improving the experience of lesbian, gay and bisexual staff and students in higher education*' (March 2010) following researching the experience of l, g, b and t staff and students in Higher Education. Many of the recommendations can be followed up in any organisation, not just a Higher Education Institution (HEI)

In the Further Education sector Unions and the Association of College have a joint agreement on guidance on equality in employment.

The joint agreement can be found on the UCU website at www.ucu.org.uk/media/pdf/e/j/Joint_Agreement_on_Guidance_on_Equality_in_Employment_May_2012.pdf

6.3 What to do when someone wants to talk about sexual orientation or someone wants to disclose/'come out'

'Coming out' about sexual orientation may be a process that people repeat many times in their lives in different settings. Questioning ones sexual orientation might be for some even more challenging. The reactions of colleagues, friends and family can be difficult to predict and some people try to work through their feelings for many years.

Coming out is a very personal decision for anyone. It is for the individual concerned to

³ CEL, UCU and UNISON (2007) 'The Disability Equality Duty'

decide when, where, how and to whom they come out. When someone comes out it should be treated confidentially and it is for the individual to decide whether they want others to know.

Once again local community organisations may be of considerable support. There are some organisations listed in the contact section at the end of this document. The Learning and Skills Improvement Service (LSIS) DVD about sexual orientation equality '*Visible and Valued*' (2008) provides further information and interviews with lesbian, gay and bisexual people about their experiences.

6.4 What about clashes with other equality groups such as religion or belief?

Workers have the right to be free from discrimination on the grounds of sexual orientation, religion, belief or lack of belief and other areas covered by the Equality Act. They are entitled to express their religious belief. However, this does not mean they can use their belief to justify discriminating against others who the law also protects.

The European Court of Human Rights (ECHR) ruled, in *Eweida and Others v. United Kingdom* (January 2013) that the right to act in accordance with one's religion may be limited in order to protect others from discrimination based on sexual orientation.

Research supported by the Forum published in 2010⁴ demonstrated that quite often any clash between faith or belief and sexual orientation was either perceived, rather than actual. Where conflict was found it resulted from a conflict of values that had not been addressed by the development of good relations.

It was reported that when the management of relationships was perceived to be difficult organisational leaders did not tackle any real or perceived tensions. The most effective measures were found to be the confident application of standard complaints or mediation or disciplinary procedures. Application of these procedures was found where staff had been trained to deal with situations that arose.

Having clear policies and procedures that staff are trained to implement is always important, but all the more so when there are situations of real or perceived conflict.

6.5 How can I include sexual orientation in my lesson delivery?

Whilst sexual orientation is about sexual attraction it is not the same as sexuality. Sexuality is basically how someone expresses themselves sexually, sexual orientation tells us more about who a person may form a relationship with based on sexual attraction, a woman – woman (lesbian), a man – woman or man (bisexual) etc... Heterosexuals also have a sexual orientation (woman – man for example). Therefore in lesson delivery, and training, refer to the various different households that exist within society whether locally, nationally, or globally. Including sexual orientation in lesson delivery can be as simple as avoiding stereotypical family structures as the only reference to family. It could also involve talking to students about the variety of different backgrounds that people come from, or households that people live in. Schools Out has provided a number of resources for lessons <http://www.schools-out.org.uk/classroom>

⁴ Forum and Lifelong learning UK Managing the Interface: Sexual Orientation and Faith

Contacts and resources

Contacts – Unions

UCU Equality Unit

Carlow Street, London NW1 7LH

Tel 020 7756 2500

Email eqadmin@ucu.org.uk

Website www.ucu.org.uk

Trade Union Congress (TUC)

Congress House

23–28 Great Russell Street

London WC1B 3LS

Website www.tuc.org.uk

NUS LGBT Campaign

4th Floor

184 – 192 Drummond Street

London NW1 3HP

Website www.nus.org.uk

Contacts – NGOs

Forum for Sexual Orientation and Gender Identity

Equality in Post School Education

Website www.sgforum.org.uk

Lesbian and Gay Foundation

Princess House

105 – 107 Princess Street

Manchester M1 6DD

Website www.lgf.org.uk

Naz Project

Palingswick House

241 King Street London W6 9LP

Website www.naz.org.uk

Press for Change

BM Network

London WC1N 3XX

Website www.pfc.org.uk

Schools Out

BM Schools Out National

London WC1N 3XX

Website www.schools-out.org.uk

Stonewall

Tower Building

York Road

London SE1 7NX

Website www.stonewall.org.uk

Resources

A range of useful resources on sexual orientation and gender identity equality for the post school education sector can be found on the Forum website.

<https://sgforum.org.uk>

