



## **Getting Equal: Proposals to Outlaw Sexual Orientation Discrimination in the Provision of Goods and Services**

### **Response to the Consultation by Equality South West and the South West Lesbian, Gay & Bisexual Network.**

#### **Introduction to the ESW response: Our Key Principles**

This introduction sets out the context in which the answers to the individual questions in the consultation are answered. Our responses to the individual questions should be read in conjunction with these introductory guiding principles.

Equality South West (ESW) is the UK's first regional equality and diversity network. ESW's role includes:

- Identifying and disseminating best practice in equalities issues in employment and service delivery;
- Increasing co-ordination and effectiveness of equalities work at a regional, sub-regional and local level;
- Developing regional equalities networks, working with them to identify priorities for policy support and development and establish a voice for the equality strands individually and collectively at regional, national and European level. We currently develop, facilitate and maintain age, disability, faith, gender race and sexual orientation networks;
- Advocating that equalities work should be developed in an holistic way rather than each individual "strand". Individuals and communities have multiple identities and experience layers of discrimination.

The Southwest Lesbian, Gay & Bisexual Network is a forum of and for LGB people in the region. Most of its members are organisations of LGB people – for example community groups, support groups, advice and information centres and trade union LGB groups. There are also a minority of "mainstream" organisations that are advancing LGB issues such as police forces and local authorities. The Network brings together

these diverse organisations to work on issues relating to LGB equality. It campaigns for better legislation or existing legislation to be enforced and all organisations to play their part in eliminating discrimination against LGB people in their policy and practice and positively promoting equality and diversity issues.

In preparing our response to the consultation on the proposals, Equality Southwest organised an open meeting of the Southwest LGB Network. In order that the views of younger LGB people are reflected in the response, Equality Southwest also consulted with "Y-Front" – a forum of younger LGB people in Bristol. We would like to thank all the individuals and organisations that gave their time to participate in the consultation process.

One of the fundamental principles of Equality Southwest is that there is no hierarchy of discrimination. Discrimination and harassment on grounds of sexual orientation is no less unacceptable than discrimination on any other ground currently prohibited by law. It is our position that lesbians, gay men and bisexuals should be granted the same legal protection in all areas of life as other equalities communities – and until this happens they will always be perceived as unequal by elements of society.

Equality Southwest believes that no exemptions should be permitted that would reduce the impact of the proposed regulations to anything less than the level of protection provided to any other group in society. The only exception to the ban on discrimination should be provisions to allow services specifically targeted at LGB people to be maintained. LGB communities have historically experienced significant discrimination and oppression within this country and continue to do so. As a means of offering at least limited protection from this discrimination, many services – both commercial and non commercial - have developed that are specifically tailored and dedicated to the needs of LGB communities. Homophobia remains embedded in society and will continue even after the regulations come into force. The regulations must be drafted in a way that permits these LGB services to continue to exist.

Equality Southwest is not convinced that there is any rationale for the provision of any goods, services or facilities to be restricted to heterosexuals and exclude lesbians, gay men and bisexuals.

Equality Southwest believes that equality is not achieved by the introduction of legislation alone. Members of equalities communities must be made aware of their rights and the legislation must be enforced robustly. The same priority must be given to sexual orientation cases as to any other, and sufficient resources be made available for this to happen.

While not the subject of this consultation, Equality Southwest would like to register its disappointment that there is still no definite proposal to outlaw discrimination in the provision of goods, facilities and services on the grounds of either age or gender identity/gender reassignment. We are aware significant discrimination that older, younger and transgender people experience when attempting to access services from the public, private and voluntary/community sectors. We note the government's stated intention to address these issues within the Discrimination Law Review although we feel it is unnecessary and unfair to wait until the review is published and implemented before these communities receive the same legal protection of other equalities communities.

This response follows the order of questions laid out in the consultation paper. In some areas, our response to one question might be essentially the same as the answer to a previous question – but we have tried to respond fully to each point raised.

### **Abbreviations used by us**

- "Equalities communities" – a collective term that is inclusive of Black & Minority Ethnic communities, Disabled people, faith/belief communities, Lesbians, Gays, Bisexuals and Transgender communities, older people, women, younger people
- "ESW" - Equality Southwest
- "GF&S" - goods, facilities and services
- "LGB" – Lesbian, Gay and Bisexual
- "Regulations" – the proposed new regulations that are subject to this consultation
- "SO" – Sexual Orientation

## ***The Scope of the Regulations***

### ***Question 1: Do you agree that the new SO regulations should apply to goods, facilities and services?***

Yes. The individuals and organisations that ESW consulted were able to give numerous examples of real life experiences of discrimination when they (or their members) attempted to access the provision of GF&S. Testimonies include experiences of GF&S being withheld or provided at a lower quality or greater expense than would have been provided to heterosexuals. Such GF&S were provided by the public, private and voluntary/community sectors of the economy. ESW received reports of LGB individuals being forced out of premises due to harassment, denied healthcare or financial services and denied entry to recreational venues. Members of LGB communities should receive the same legal protection from discrimination as other equalities communities. There must be an unequivocal legal position that LGB people are equal citizens and must not be discriminated against

### ***Question 2: Should the concept of goods, facilities and services have the same scope as in other equality enactments, in particular Part 2 of the Equality Act 2006?***

Yes. The government should avoid creating different sets of rights for different equalities communities. Equalities legislation has developed in a piecemeal manner over the previous thirty years, the Government should use every opportunity possible to ensure that every equalities community enjoys the same high standard of legal protection. Unless the regulations have the same scope as other equality enactments, the Government will foster the damaging idea that there is a hierarchy of need within equalities communities. It will send out the message that LGB people may have some rights, but are not entitled to true equality.

Differing levels of legal protection also creates confusion for victims of discrimination who are members of more than one equalities community. A Black lesbian refused access to a service might have to

try and identify whether she was discriminated against because of her race, gender or sexuality and then prove this in court.

*ESW believes that the concept of GFS should have at least the same scope as the other enactments in the Equality Act 2006. However the regulations should go further than this and mirrors that of both the Sex Discrimination Act 1975 and the Race Relations Act 1976 that defines GFS as "The services of a profession or a trade, or any local or other public authority." ESW believes that this is more appropriate as it is the widest possible definition*

***Question 3: Do you agree that we should provide an exemption from the prohibition on sexual orientation discrimination so that services to meet a specific and justified need can be provided separately to different groups on the basis of their sexual orientation? What specific activities would such an exemption need to apply to?***

Yes. ESW believes it's important that after the regulations come into force, services that are designed to cater specifically to the needs of lesbians, gays and/or bisexuals are able to continue to operate effectively. LGB people may feel more confident about using services where the staff and other service users are LGB. Examples of LGB specific services that might seek an exemption from the regulations include youth groups, sexual health services, domestic violence support services, counselling and advice providers and telephone support helplines.

It is important to understand that these services have evolved because of the historic and often institutionalised discrimination experienced by LGB communities. LGB specific services can provide physical, emotional and psychological "safe spaces" for LGB people. ESW believes that services are denied or provided of a poorer quality to LGB people. LGB individuals can often recall instances when they personally received poor treatment or were misunderstood or were made to feel unwelcome by "mainstream" services or know of peers that had these experiences. This leads to a situation in which even when LGB people would receive an equal service from a mainstream service, they may still choose not to access it because they fear that this will not be the case.

Gay and bisexual men reported to ESW that they prefer to use a sexual health clinic run by Terrance Higgins Trust for gay and bisexual men and

which is staffed by other gay and bisexual men. Some of these men would not access mainstream sexual health services as quickly or regularly as the THT clinic. It would obviously be unwise if the regulations were drafted in a way which meant that such specific sexual health services were no longer possible.

Members of the LGB youth group reported to ESW that while they may like to access a mainstream youth service, they feel that it would not be safe for them or reflect their needs. The group was open to LGB young people or those who are questioning their sexuality. Some of them were not "out" in their school or college and were worried about their confidentiality if their heterosexual peers were able to attend the group. They welcomed the fact the group was supported by LGB workers who understood their needs. They also knew that mainstream youth groups do not offer workshops on coming out or LGB sexual health.

One of the examples in paragraph 3.9 highlighted a gay bar would be acting in a discriminatory, and possibly illegal, way if door staff turned away customers that they believed were heterosexual. Those involved in the ESW consultation agreed that denying entry to heterosexual customers would be discrimination and ideally should not happen. However they were keen that the Government understood why this happened. Many LGB people feel they can only ever truly relax and feel comfortable displaying affection to their partners in gay venues. Some believe that trying to prevent access to LGB pubs, bars and clubs to heterosexual can be an effective, though clearly clumsy, way of protecting safe social space. The "troublemakers" are often not obvious at the door but become problematic after a few alcoholic drinks.

The regulations outlawing SO discrimination are welcomed. However there should be no complacency that the mere existence of anti-discrimination regulations will not ensure all LGB people receive equal treatment from mainstream services. Attitudinal shifts take a long time to occur. It is clear that racism for example, is still present in society more than three decades after the first anti-racism legislation.

## ***Premises***

### ***Question 4: Do you agree that premises should be covered by the SO regulations?***

Yes. Sexual orientation has no bearing on a person's suitability to buy or rent premises. The ability to find somewhere safe to live is a fundamental human right for everybody including LGB people. Discrimination in this area has particularly serious consequences for those who experience it. One woman who participated in the ESW consultation reported when she was recently looking for a new home, a vendor stated she would not sell her home to lesbians.

ESW also believes that discrimination in this area should be countered as diversity of residents in an area helps contribute to strong and vibrant communities.

ESW believes that there could be a specific need to only let premises to LGB individuals. For example housing associations and local authorities could provide supported housing for young LGB homeless people and sheltered housing tailored to the needs of older LGB people could be provided by both public and private organisations. These premises could legitimately be restricted to LGB people for the reasons elaborated upon in the above answer to question 3. The regulations should be drafted in a way that allows housing to be provided in this way.

### ***Question 5: Do you agree that an exemption should be provided for selling or letting of private dwellings as described?***

Yes – especially as this would bring the regulations in line with other anti-discrimination legislation. However it is crucial that the exemption is tightly drafted so as to prevent abuse by prejudiced landlords wishing to stop LGB potential tenants rent space. It should not be possible for an owner of any small commercial business (guesthouse, B&B etc) to make minor superficial changes to the premises to give the illusion of shared facilities when in reality they have separate provisions.

### ***Question 6: Do you agree that private members' clubs should be included in the SO regulations?***

Yes. LGB people should not be prevented from joining private members clubs

***Question 7: What is your view on our proposal that both private members clubs and associations should be permitted to include having a particular sexual orientation as a membership criterion, but only where that criterion is explicitly connected to the purpose for which the club has been established?***

As previously discussed, within LGB communities, social groups and clubs have been created because LGB people have felt unwelcome and/or unsafe in mainstream heterosexual establishments. Such clubs are essential for LGB who are not “out” about their sexuality in the wider community or who need a secure environment within which they can develop their confidence. These clubs may also be their preferred way to meet others with the same sexual orientation. The regulations should be drafted in a way that creates an exemption for these clubs to continue to exist, as has been provided by other discrimination legislation. ESW’s views on this issue are reflected in paragraphs 3.20 and 3.21 of the consultation paper.

***Question 8: Do you agree that the new SO regulations should apply to public functions as well as to goods, facilities and services? Do you think that any specific additional exceptions might be needed from a prohibition on SO discrimination in the exercise of public functions?***

It is crucial that the regulations apply to public functions.

ESW notes the Government’s intentions to only allow certain exemptions (detailed in paragraph 3.25) in the regulations to bring them in line with other anti-discrimination laws. However, those who participated in our consultation were unsure why permitting discrimination on the grounds of sexual orientation (or race, disability, gender or faith for that matter) is necessary to safeguard national security, protect the constitutional independence of the judiciary or ensure that the Crown Prosecution Service can continue to make decisions based on the facts of the case alone.

ESW believes that local authority powers under the Local Government Act 2005 definitely should not be exempt from the scope of the regulations. There is absolutely no justification for local authorities promoting economic, social and environmental well being of their area in a way that discriminates on the grounds of sexual orientation. Local

authorities must take into account the needs of all their local population and not exclude LGB communities.

## ***Education***

### ***Question 9: Do you agree that schools should be covered by the SO regulations?***

Yes. Blatant homophobia is more rife in schools than probably any other sector. Guidance from the Department for Education & Skills states that all schools should have an anti-homophobic bullying policy but only 6% of schools have. Homophobic abuse is usually tolerated by schools as the norm within young people's culture and not tackled appropriately.

It is obvious that LGB pupils, or those suspected of being LGB, can not have an equal "experience" of education as their heterosexual peers if they are being physically, emotionally and psychologically abused. There is ample research to substantiate this. In *Social exclusion, absenteeism and sexual minority youth* (Rivers, I. 2000), 72% of lesbian, gay and bisexual (LGB) adults reported a regular history of absenteeism at school due to homophobic harassment. 50% who had been bullied at school had contemplated self-harm or suicide – 40% had made at least one attempt to self harm. In another survey (*Bullying – don't suffer in silence*, DfES, 2002), 82% of secondary school teachers said they were aware of verbal homophobic bullying and 26% were aware of physical homophobic bullying. Furthermore in *The Bullying of sexual minorities at school: its nature and long-term correlates* (Rivers, 2001) studied the types of bullying experienced by 190 LGB adults, and found that:

- 82% of respondents had been subject to name-calling
- 71% had been ridiculed in front of others
- 60% had reported being hit or kicked
- 59% had rumours spread about them
- 58% had been teased
- 49% had their belongings stolen
- 27% had been isolated by their peers
- 11% had been sexually assaulted by either peers or teachers, whilst at school.

Most of the young people that participated in the ESW consultation reported experiences of homophobic abuse. One young person had to

leave school after experiencing a sustained campaign of abuse that culminated in a rope being put round her neck. Her younger brother was also bullied for having a sister perceived to be a lesbian. Another young person reported that the school did nothing to manage the behaviour of his bullies but he was disciplined when he stood up for himself. Another tried to make a formal report but was prevented as the school did not have any systems to record homophobic abuse.

As highlighted by the interim report of the Equalities Review – homophobic bullying has a substantial effect on pupil's educational achievement. However this may continue to affect their adult life not only in relation to their emotional and mental health but also more limited employment opportunities due to not getting the most out of their education.

Homophobia in schools can be eliminated if the school senior management team recognise it as a priority and engage in the entire school community in the work. A Gloucestershire LGB community group, who is a member of the Southwest LGB Network, reported to ESW that it worked with one school in the county on this issue and within one year, pupils were not using homophobic terms of abuse. Pupils accepted that homophobic abuse was just as unacceptable as racist abuse.

Schools should promote ideas relating to equality, including LGB equality, within their curriculum – particularly but not only within citizenship classes. If young people are not taught LGB sexuality is as natural and normal as heterosexuality, then they will be likely to grow into adults carrying prejudice towards LGB people. This will obviously impede the Governments stated aim of achieving a society where everyone can achieve their full potential unfettered by prejudice and discrimination. Schools must also treat LGB parents/carers equally.

The regulations should be accompanied by a Code of Practice for schools which is explicit about the issues schools need to consider if they are to comply with the new regulations.

***Question 10: Are there any circumstances in which you consider that schools, or a part of the schools sector, should be exempted from the regulations?***

There should be no exemption – all schools, colleges and universities should be covered by the regulations regardless of whether they are in the state, maintained, independent or faith sectors.

Any exemptions would essentially undermine the Government's programmes such as Every Child Matters and its equivalent programmes in Northern Ireland, Scotland and Wales. Schools cannot meet their obligations under these programmes if they fail to treat LGB pupils equally and take all reasonable steps to tackle the abuse they may be experiencing while at school. Furthermore, one of the purposes of schools is to develop young people into responsible adults and this is not possible if they do not engage with ideas relating to equality, respect and tolerance.

No other anti-discrimination legislation exempts schools. It is not possible, for example, for schools to teach that Black or Disabled people are inferior. The introduction of any exemption would send out the message that LGB people are not as fully deserving of equality as other equalities communities.

***Question 11: Are there any areas of activity for schools for which you consider special provision needs to be made?***

Paragraph 3.33 of the consultation document states that the government is considering exemptions for faith based schools so they can operate in accordance with their religious ethos. This is a key issue considering the proposed increase in the number of faith schools and privately run city academies. ESW fundamentally believes that there should be no such exemption. Schools are not like other services where individuals choose to be customers or consumers. Like all pupils, LGB pupils, and those questioning their sexuality, do not choose which schools. Parents/carers usually choose which school the young people should attend. This may be a school which reflects their family's religious belief or it may be a faith school which happens to be the closest school to their home. It is oppressive to place LGB young people in school environments where they are taught their sexuality is a sin and is wrong. This can only damage their self esteem and self identity and may lead to increased proclivity of drug/alcohol misuse, self harm and

suicide. The fact that the school is a faith school does not make these effects any more excusable. The core texts of at least three of the world's major religions could be interpreted to justify the enslavement of members of other races. The Government would not allow a faith school to teach this to young people because it reflects its religious ethos and neither should it allow faith schools to condemn homosexuality.

There is no justification for allowing faith schools to be exempted from legislation covering other schools so they do not have to function in a way that shows people of a different sexual orientation are equal citizens, are due equal respect and are to be treated no differently from any other person.

Respondents to this consultation exercise who argue that faith schools should be exempt should be challenged to clarify how they can meet their obligations to secure the five outcomes under Every Child Matters for ALL children and young people.

ESW does not believe that a school could apply the provisions of the regulation concerning homophobic bullying as outlined in paragraph 3.30 if at the same time, they are allowed to teach that homosexuality is inferior or a sin.

### ***Religious Organisations***

#### ***Question 12: Do you consider that an exemption should be provided from the regulations for some of the activities of religious organisations?***

ESW does not believe that religious organisations that provide services, whether commercial or social, should be exempted from the scope of the regulations. It is fundamentally wrong for religious organisations to assert their beliefs as a legitimate justification to deny a service or provide a poorer quality service to LGB people. No exemptions exist for religious organisations within the Race Relations Act, Sex Discrimination Act or Disability Discrimination Act. In the spirit of the commitment to equal treatment that otherwise runs through these regulations, the only consistent application of this principle will be to deny any exemption for discrimination.

***Question 13: Do you agree that these exemptions should be restricted to activities that are primarily doctrinal? Are there any other activities that you consider should be covered by an exemption, what are they and why do you consider they need to be exempted?***

ESW believes there should be no exemptions even for activities that are primarily doctrinal. Otherwise LGB people would receive weaker legal protection than other equalities communities.

The High Court has ruled that the exemption “for the purposes of organised religion” contained within the Employment Equality (Sexual Orientation) Regulations 2003 should be narrowly construed and, in effect, applies only to ministers of religion in the context of employment and vocational training. The regulations must be drafted in way that does not allow a wider interpretation of “organised religion” in the provision of goods and services

In most, if not all, of the faiths that exist in Britain today, there are active groups of believers who are themselves LGB, or who are not themselves LGB but support those who are, and who are working to win acceptance within their particular faith group. Allowing any exemption, even a narrow one, would undermine these efforts to progress religious organisations to positions where they can at least tolerate diversity.

If religious organisations have doctrinal reasons that prevent them from ensuring that LGB people are treated as equal citizens of modern Britain, then it is a matter for the organisations to reconcile. They should not be seen as contradictions that can be validated and supported by law.

### ***Charities***

***Question 14: Do you agree that an exception should be provided for charities that provide services specifically to people because of/according to their sexual orientation?***

As explained in detail in previous answers, ESW does believe that there are legitimate reasons for the continuation of services dedicated specifically to LGB communities. Some of these services are delivered by charities and ESW would support an exemption from the regulations.

## ***Types of discrimination***

***Question 15: Do you agree that the SO regulations should include direct and indirect discrimination as well as victimisation? Are there any particular considerations or situations that should be taken into account in how such provisions are drafted?***

Yes. ESW believes that the regulations should offer the same protection as is available under all other anti-discrimination provisions.

Mirroring the Employment Equality (Sexual Orientation) Regulations 2003, the regulations should not only cover LGB individuals, but those who associate with them (friends, relatives etc) and those who are assumed to be LGB (irrespective of their actual sexuality).

ESW does not believe it is right to exclude harassment from the scope of the regulations. If service providers fail to take reasonable steps to prevent LGB customers/service users being harassed on their premises, then this would mean LGB would not be able to receive the full benefit of the service or they would stop using it completely.

***Question 16: Do you agree that discriminatory practice should be included in the scope of the SO regulations?***

Yes. Informal discriminatory practice is no less potent or significant than formal discriminatory policies and procedures.

***Question 17: Do you agree that discriminatory advertising should be included in the scope of the SO regulations?***

Yes. This would ensure the regulations were in line with other anti-discrimination laws. ESW welcomes the proposals to make it a criminal offence to submit and knowingly publish a discriminatory advert.

***Question 18: Do you agree that instructions to discriminate should be covered by the SO regulations?***

Yes.

***Question 19: Do you agree that the validity of contracts should be covered by the SO regulations?***

Yes. This would ensure the regulations were in line with other anti discrimination laws.

### ***Enforcement***

***Question 20: Do you agree that the enforcement provisions for the SO regulations should match those for the other equality enactments?***

Yes. Unless the regulations are enforced robustly, prejudiced service providers will continue to discriminate.

***Question 21: Do you have any comments on the Government's plans for how the SO regulations will be enforced and supported by the CEHR?***

ESW obviously welcomes the creation of the CEHR and hopes that it will place enforcement of anti-discrimination legislation at the core of its functions.

ESW is concerned that for the twelve months between the enactment of these regulations and the promised arrival of the CEHR, LGB people will not have access to any statutory services providing support, advice or representation to enable them to challenge discrimination.

Similarly, the Government cannot wait until the CEHR is created until it raises awareness about the new legislation. LGB people must be made aware of their new rights and how they can be enforced so they know what to do when they receive unequal treatment. The government should run a media campaign, including TV and press adverts, highlighting the new rights.

ESW is concerned about previous comments of ministers, including the Prime Minister, playing down the enforcement role of the CEHR and stating that it might adopt a "light touch" approach. Homophobic prejudice and discrimination is rooted deep in our society and will remain so unless the CEHR adopts a robust approach to tackling it.

The Government must ensure that the CEHR is granted sufficient resources to tackle all discrimination. The CEHR must ensure that its resources are allocated fairly across all of the six equality strands. There must be no hierarchy of issues within the organisation which allows the discrimination experienced by some equalities communities to be regarded as more significant than that of other communities.

LGB activists and community groups must be involved in decisions about how to prioritise the anti-homophobic work of the CEHR. The Commission must also ensure that it supports the work of regional, sub-regional and local groups to maximise the number of sources of quality information and advice on LGB rights. Many trade unions have a proven track record of developing positive equality, including LGB equality, agendas; the CEHR should ensure that this expertise is not lost.

**Ends**