Government
Equalities Office
Putting equality at the heart of government

Explaining the Equality Bill: Harassment protection for lesbian, gay, bisexual and trans people

Introduction

People have told us they are worried that the Equality Bill does not provide full protection against harassment related to sexual orientation and gender reassignment. They are worried that the Bill seems to exclude protection from harassment for lesbian, gay, bisexual and trans (LGB and T) pupils in schools, and for LGB people accessing services and public functions. This factsheet explains how the Equality Bill does provide legal protection against acts of harassment, in the sense the word is commonly understood, in these areas. It also explains why some of the problems of bullying and harassment are best dealt with through measures other than discrimination law and that this is the case for all protected characteristics – race, sex, sexual orientation, gender reassignment, etc.

What protection does the Equality Bill provide for lesbian, gay, bisexual and trans people?

The Government has a strong record in increasing rights and protection for LGB and T people, including repealing section 28, creating civil partnerships, introducing gay adoption, equalising the age of consent, lifting the ban in the armed forces and introducing – for trans people – legal recognition for the gender in which they wish to live.

The Equality Bill provides comprehensive protection from direct and indirect discrimination, harassment and victimisation for LGB and T people. This protection is provided in the areas of education, employment, premises, associations and when accessing services and public functions. The Bill strengthens the protection for LGB and T people currently provided by discrimination law in the following ways:

✓ The Bill places an **Equality Duty** on public bodies, which will mean they need to think about the needs of LGB and T customers and employees before designing their services for the community. This could mean:

- a health centre running a promotional campaign to encourage more lesbians to attend clinics for cervical smear tests;
- a local authority-run housing association mediating to resolve a neighbour dispute in which a couple are being subjected to homophobic abuse;
- a school working with parents and governors to improve their anti-bullying programme, aimed at tackling homophobia and transphobia;
- a police force taking action by holding meetings with their local LGB and T communities to help address hate crime in their neighbourhood;

- a public transport provider holding staff training sessions to ensure their drivers understand what they can do to help transgender people travel safely.

✓ The Bill **removes the insurance exception** which allowed insurers to treat people differently on grounds of sexual orientation in some circumstances.

✓ The Bill also **removes the 'medical supervision'** requirement in the definition of gender reassignment.

✓ The Bill **changes the definition of direct discrimination** so those who are discriminated against because they are *perceived* to be LGB or T will be protected from discrimination. People who are discriminated against because of their *association* with LGB and T people will also be protected.

✓ The Bill **bans indirect discrimination because of gender reassignment**. This will make a policy or practice unlawful if it has an unfair impact on transsexual people. For example, a college which has a policy not to amend an educational certificate if a person changes their name and gender.

✓ The Bill also makes it **unlawful to discriminate because of gender reassignment when exercising a public function**. This means, for example, that it will be unlawful for the police to discriminate against transsexual people when investigating a crime.

✓ The Government amended the Bill to provide new **protection from discrimination for transsexual pupils in schools**.

✓ The Bill outlaws **dual discrimination**, allowing people to bring a claim if they have been unlawfully discriminated against because of a combination of two protected characteristics – for example their sexual orientation and sex, or their sexual orientation and disability. This means that lesbians or gay disabled people will have the protection they need against discrimination.

How does the Equality Bill protect LGB and T people from harassment?

LGB people are protected against sexual orientation harassment in employment and vocational training. T people are protected against gender reassignment harassment in employment, vocational training, services and public functions, premises and associations[1]. These areas are the areas covered by the relevant European Directives, which apply a specific protection against harassment in these circumstances.

Outside these areas, the Equality Bill also prohibits acts of harassment and bullying which LGB and T people tell us they encounter but it does so in a different way. In these situations, the Equality Bill provides protection by making it unlawful to subject a person to a detriment, which is a form of direct discrimination. So where someone is treated in a way which would amount to harassment but is not covered by the specific definition of harassment, he or she can bring a claim on the basis that the harassment is direct discrimination in the form a detriment.

[1] Protection for trans people can be found in the Sex Discrimination Act 1975, as amended. The Equality Bill extends the gender reassignment harassment protection to public functions to complement the existing protection in the field of services, and to associations which is not covered in existing law.

Dealing with homophobic and transphobic bullying in schools

The overwhelming problem LGB and T pupils in schools are worried about is homophobic and transphobic bullying by other pupils. This is a problem which the Government takes very seriously. However, while the way a school treats its pupils is covered by discrimination law, the relationship between pupils is not. This is the case for all protected characteristics, so a pupil could not use the Equality Bill to take legal action against another pupil for racist or any other kind of bullying. There are other, more appropriate, ways than discrimination law to deal with bullying by pupils and we are doing everything we can to tackle it.

This Government has sent a strong message that bullying is not acceptable in our schools. We have made it clear that all forms of bullying, including those motivated by prejudice, must not be tolerated and should always incur disciplinary sanctions.

As well as a general duty of care to their pupils, schools have a specific legal duty to have policies in place to prevent and tackle bullying. Head teachers are under a legal duty to determine measures to promote respect for others and to prevent *all forms* of bullying among pupils, including homophobic and transphobic bullying.

The Department for Children, Schools and Families has provided guidance for schools on dealing with racist, sexist, religious, homophobic and transphobic bullying. The guidance makes it very clear that a school must take all these forms of bullying seriously, and a failure to do so would mean it is vulnerable to discrimination claims.

The Equality Duty in the Equality Bill will also have a part to play. It will ensure that schools address issues around the treatment of LGB and T children – for example, it should encourage schools to develop and improve their anti-bullying strategies to deal effectively with the issues that arise in individual schools.

Bullying and harassment in schools by adults

Bullying and harassment by adults in a school cannot be tolerated. It is contrary to a teacher's duties, and the school's duties. If a teacher bullied a pupil because of his or her sexual orientation or trans status, this would be direct discrimination by subjecting the pupil to a detriment. If a teacher witnessed a pupil subjecting another to homophobic bullying and took no action, this may also lead to claims of discrimination by detriment if homophobic bullying was ignored whereas other forms of bullying in the school were not. In neither case would protection be any stronger if there was a specific reference to harassment in the law.

We have been provided with examples such as a 15 year old boy being called queer by his teacher or a 16 year old girl being prevented from doing her GCSEs by her school because she came out as a lesbian. Both of these examples demonstrate completely unacceptable behaviour and we are confident that these situations constitute direct discrimination in the form of a detriment which would be covered by the Equality Bill.

Dealing with bullying and harassment in other areas outside employment

People have also told us they are worried about other situations outside work where LGB and T people complain of harassment and bullying, such as when accessing services and where public functions are being exercised. For example, a gay man who is in a bar to watch a football match and overhears homophobic remarks by customers about some of the footballers, or a trans man being abused by someone in the street or a bisexual tenant in a block of flats being subjected to homophobic abuse by another tenant. Such behaviour is unacceptable, but it does not fall within discrimination law. Depending on the particular circumstances, some of these sorts of situations would fall within the remit of other areas of law such as the Protection from Harassment Act 1997 and criminal public order offences.

However, if a gay man in a bar overheard staff making homophobic remarks about him, or a lesbian tenant heard her landlord making homophobic comments about her lifestyle to other tenants, in both cases the complainants would be able to claim direct discrimination in the form of a detriment.

Examples of how the Equality Bill provides protection from harassment

The Equality Bill must be able to tackle situations where harassment takes place. The following are examples of the types of harassment and bullying which are sometimes complained of and how they are protected under discrimination provisions in the Bill.

- ✓ If a teacher singled out a gay or bisexual pupil during a class discussion telling him that unless he changed he would go to Hell, or ridiculed him in some way because of his sexual orientation, her treatment of the pupil would amount to direct discrimination because of sexual orientation by subjecting the pupil to a detriment.
- ✓ A landlady in a bed and breakfast, on becoming aware that customers' sleeping arrangements had two men sleeping together and two women sleeping together, mutters homophobic comments under her breath making it clear that she does not approve. The landlady would be subjecting the customers to direct discrimination because of sexual orientation in the form of a detriment because she would not have treated heterosexual couples this way.
- ✓ A prison officer regularly uses transphobic language when speaking to a trans prisoner. Again this would be direct discrimination because of gender reassignment in the form of a detriment. In addition, the Equality Duty will ensure that prisons consider the needs of LGB and T prisoners and staff to ensure public services are appropriate for them and to ensure a harassment-free environment within the public sector.

Government Equalities Office
March 2010

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JN302043