



Equality Commission

FOR NORTHERN IRELAND

Eliminating Sexual Orientation Discrimination in Northern Ireland

Short Guide - Health & Social Care

A guide for the health and social care sectors on the implications of the sexual orientation Regulations on the provision of goods, facilities, services and premises.

The Equality Act (Sexual Orientation)
Regulations (Northern Ireland) 2006

Introduction

Legislation introduced in Northern Ireland on 1 January 2007, 'The Equality Act (Sexual Orientation) Regulations (NI) 2006' (the Regulations) makes it unlawful for service providers to discriminate against people because of their sexual orientation in the provision of goods, facilities and services, the management and disposal or premises (including land), the provision of education and the exercise of public functions. The Regulations also apply to housing, advertisements and private members clubs.

Discrimination on grounds of sexual orientation is already unlawful for employers and others (including institutions of further and higher education) in the areas of employment and vocational training under the Employment Equality (Sexual Orientation) Regulations (NI) 2003.

This short guide looks at the implications of the legislation for the health and social care sectors and is one of a series of sector specific guides produced by the Commission. Other guides in the series cover Education, Hospitality, Housing, and Financial (pensions/insurance).

This guide gives general guidance only and should not be regarded as a complete and authoritative statement of the law.

Detailed information on the Regulations is available from the Equality Commission's publication '**Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises**' which can be found on the Commission's website, along with sector specific guides at www.equalityni.org.

Background

Evidence from available research shows that lesbian, gay and bisexual people experience significant problems related to both their mental and physical health and often the health of this group is largely ignored. Of additional concern is the level of discrimination that some lesbian, gay and bisexual people face when accessing health services (Stonewall 2003¹).

With the introduction of the 2006 Regulations, health service practitioners can not refuse treatments or turn away individuals from GP practices on grounds of sexual orientation.

¹ Inclusion Project, Towards a Healthier LGBT Scotland, Stonewall Scotland & NHS Scotland, October 2003

What is sexual orientation discrimination?

Sexual orientation discrimination is where people are treated less favourably because of sexual orientation. This includes people who are:

- homosexual (gay, lesbian)
- bisexual
- heterosexual.

It also covers:

- perceived sexual orientation, even if incorrect assumptions are made about a person's sexual orientation;
- people who are associated with others of a particular sexual orientation.

Discrimination and civil partners

The Civil Partnership Act 2004 enables same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. The effect is to make the status of a civil partner comparable to that of spouse. The 2004 Act permits same-sex couples to enjoy many of the rights which those people who are married enjoy, such as rights to a survivor's pension or benefit packages from employers such as private health care.

Civil partners will be able to bring a sexual orientation discrimination claim against providers of goods, facilities and services who deny them access to a service or benefit, or a service being offered to married persons in similar situations.

Public authorities

Public authorities, including health and social care organisations, have a duty under Section 75 of the Northern Ireland Act 1998, when carrying out their functions, to have due regard to the need to promote equality of opportunity between persons of different sexual orientation. The Regulations, which apply to service providers, are different in that they grant individual rights to anyone who believes that they have been discriminated against on grounds of sexual orientation.

Types of discrimination

The Regulations cover several types of discrimination on the grounds of sexual orientation.

Direct discrimination

Is where one person or more (an organisation) treats or would treat another less favourably than others on grounds of sexual orientation in the same or similar circumstances. Direct discrimination is unlawful whether it is intentional or not.

Indirect discrimination

Occurs where:

- **a provision, criterion or practice** is applied equally or would apply equally in a situation which puts people of a particular sexual orientation at a disadvantage and which cannot be shown to be a proportionate means of achieving a legitimate aim; or
- **a requirement or condition** is applied equally or would apply equally in a situation where a considerably smaller proportion of people of the same sexual orientation can comply with it; which is not justifiable; and which is to the detriment of the individual because they cannot comply with it.

Victimisation

Occurs when someone is treated less favourably than others because:

- they have already made a complaint (brought proceedings or threatened to bring proceedings) under the Regulations; or
- have helped someone else to do so (provided evidence in proceedings, acted as a witness or provided documentation); or
- alleged that a service provider or others have committed an unlawful act under the Regulations.

Discrimination in goods, facilities and services

The Regulations place duties on organisations not to discriminate on grounds of sexual orientation in the provision of services. It is unlawful for

anyone concerned with the provision of goods, facilities and services to the public, or a section of the public, to discriminate against individuals on grounds of sexual orientation by:

- refusing or deliberately omitting to provide any service which it offers to or provides to members of the public, or a section of the public; or
- providing those services at a lower (inferior) standard or quality, such as being offhand, hostile, less courteous or rude towards them; or
- providing services on less favourable terms or in a worse manner such as imposing obstacles or charging extra for a service.

Service providers are covered regardless of size; whether they are private, public or in the voluntary sector; and whether the service is paid for or provided free of charge. The term 'goods, facilities and services' is used to denote a wide range of activities carried out by organisations:

- 'goods' (such as a computer, car, groceries) covers the ordinary meaning of the term, ie items for sale;
- 'facilities' covers anything from resources for doing something (such as use of meeting rooms, hire of equipment, entertainment facilities for functions) to banking facilities for saving money;
- 'services' covers help or work from another, such as supply of electricity by a public or private company, or supply of food at a restaurant.

Organisations in the health sector that are covered include:

- hospitals
- doctors/dental surgeries
- pharmacies & opticians
- private clinics
- nursing homes
- residential homes
- child care homes
- refuges
- orphanages
- child care facilities.

This list is for illustration purpose only and does not cover all services falling under the Regulations.

Examples of sexual orientation discrimination

The examples given are intended simply to illustrate the principles and concepts used in the legislation that could amount to discrimination under the Regulations. They should not be treated as complete or authoritative statements of the law.

Direct discrimination

Two women go along to their first ante-natal class. As they arrive at the class they are informed that the classes are arranged for pregnant women and their partners 'not friends'. The pregnant woman informs the administrator that this isn't a friend but her partner and that they are having a baby together. The administrator continues to say that by partner we mean 'male partner' as in 'father'. This is likely to constitute direct discrimination under Regulations.

Discrimination in access to a service

A lesbian woman, who is in a civil partnership, is considering having fertility treatment and has approached an advice agency for help. She and her partner are informed that they are not in a heterosexual relationship and accordingly will be ineligible for any advice.

The advice agency is treating the same-sex couple less favourably than heterosexual couples by not offering the same service. This is likely to constitute discrimination under the Regulations.

Refusal of service

A bisexual woman requests a cervical smear at her local surgery. She is told that she cannot be given an appointment unless she is currently in a heterosexual relationship, because the surgery receptionist mistakenly assumes she would not otherwise have any need for a medical smear.

Under the Regulations this is likely to amount to less favourable treatment on grounds of sexual orientation.

Direct discrimination

As part of the rules for visiting sick patients in a hospital only partners are allowed in after visiting hours. Mark's partner John is currently in a high dependency unit which allows partners to visit outside normal visiting hours. Mark has tried to visit John and been denied entry to the ward. It emerges that heterosexual partners are allowed in while same-sex partners are classified as friends and are therefore denied access.

Under the Regulations this is likely to constitute direct discrimination as John is being treated less favourably than others. Hospitals need to ensure that any policies they have regarding visiting and partners do not discriminate against same-sex partners or on grounds of sexual orientation.

Application to GP's surgery to register as a patient

A gay man applies to his local doctor's surgery to be put on their register of patients and is told there are no places available. However a friend who is in a heterosexual relationship also applies and is placed on the patient register.

Treating individuals less favourably on grounds of sexual orientation is likely to amount to discrimination under the Regulations. Surgeries need to ensure that patient's registration criteria or practices do not discriminate on grounds of sexual orientation.

Other areas covered by the Regulations

The Regulations apply to organisations relating to religion and belief and also make discrimination unlawful on grounds of sexual orientation in the following areas:

- **the disposal or management of premises** (including land);
- **the provision of education.** Schools, colleges and universities cannot discriminate against existing pupils/students in the way it affords them access to benefits or against prospective pupils/students as regards terms of admission;

- **public authorities** when carrying out any of their public functions; and
- **private members clubs** with 25 or more members in respect of their membership, application for membership, guests and prospective members and guests.

Anyone involved in the health and social care sectors must also be aware of a number of other provisions in the Regulations that afford protection to individuals on grounds of their sexual orientation. These include:

- **Discrimination after a relevant relationship has come to an end**

Where a previous relationship existed, such as customer/client relationships, it is unlawful to discriminate on grounds of sexual orientation against someone after such a relationship has come to an end, where the discrimination arises out of and is closely connected to that relationship.

- **Discriminatory advertisements**

It is unlawful for a person to publish, or cause to be published, an advertisement for goods, facilities, services and premises that can reasonably be understood to indicate an intention to do an act which is, or might be, unlawful sexual orientation discrimination. An advertisement may include any publication or notification whether public or not such as newspaper advertisements, announcements on websites, e-mails, notices, displays, leaflets, posters and internal newsletters.

- **Instructions/aiding unlawful acts**

It is unlawful for a person involved in the provision of goods, facilities and services, education, the exercise of public functions, the disposal and management of premises (including land), and private member clubs:

- who has authority over another person (superior); or
- who has influence over another person;

to instruct that person to commit an act of unlawful discrimination under the Regulations, or to procure or attempt to procure the commission of such an act by that person.

Examples could include a dental surgery owner instructing staff not to allow gay clients to join the practice, or a doctor's practice instructing reception staff to deny gay patients access to the surgery.

It is also unlawful for a person to pressurise, induce or attempt to induce another individual to commit an act which is unlawful under the Regulations. Bringing pressure on individuals includes providing or offering any benefit, or subjecting them to any other detriment.

A person who knowingly aids another person to carry out an act of discrimination or victimisation shall be treated as if they themselves have carried out the act.

- **Employer liability**

Many service providers in the health and social care sectors are also employers. Employers are liable for the actions of employees carried out in the course of their employment (often referred to as vicarious liability) whether the act was done with or without the employer's knowledge or approval.

Further information on all the above areas may be found in the Equality Commission's publication 'Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises' which is available on the Commission's website, www.equalityni.org.

Good practice guidance for service providers

Discrimination against gay, lesbian and bisexual people is unlawful and catering for them makes good business sense. It is recommended that all health and social care service providers should adopt anti discrimination policies and procedures and put them into effective practice to minimise the risk of sexual orientation discrimination. Adoption of good practice measures will enhance the image of the business as a proactive equality organisation, increase the reputation of the organisation resulting in business benefits and improving general performance.

The implementation and application of such policies helps to develop an environment in which employees and customers/clients understand in clear terms what behaviour is and is not acceptable.

Service providers are more likely to comply with their legal duties under the Regulations, prevent employees from discriminating against clients and to minimise the risk of legal action being taken against them if they implement the following steps:

- inform all staff that it is unlawful to discriminate against individuals on grounds of sexual orientation;
- review all policies and procedures currently in operation;
- establish non discrimination policies, practices and procedures on the provision of service to customers;
- consult on service policies with lesbian, gay and bisexual representative groups;
- communicate all relevant policies to staff;
- provide regular training and guidance on sexual orientation awareness and service policies for all staff, including those not providing a direct service to the public;
- address acts of sexual orientation discrimination by staff under disciplinary rules or policies and procedures;
- have a customer complaints procedure;
- monitor the implementation and effectiveness of all relevant policies;
- regularly review whether services are accessible and act on any findings.

For further information on good practice please refer to chapter 10 of the Equality Commission's guidance 'Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises' available from the Commission's website www.equalityni.org.



How can we help?

The Equality Commission for Northern Ireland can give advice and information on 'The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006'. Our advisory services are free of charge and we can also provide training for service providers.

For further information, please contact us at:

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Sector specific short guides are available in the areas of:

Education
Hospitality
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