

Promoting Sexual Orientation Equality

Priorities and
Recommendations

Equality Commission

FOR NORTHERN IRELAND

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1 Executive Summary

1.1 The purpose of this paper is to inform policy developments to promote sexual orientation equality in Northern Ireland by setting out the Commission's high level policy recommendations.

1.2 This paper sets out the Commission's views on the effective and targeted legal and policy responses that are required to promote equality for lesbian, gay and bisexual (LGB) people in Northern Ireland.

Strategic issues

1.3 In summary, we have set out below the range of strategic issues, including priority areas for strategic action, which we recommend that the Executive, Departments and other key stakeholders address, including via the proposed Sexual Orientation Strategy.

1.4 We recommend that **priority areas** for strategic action are:

- **tackling prejudicial attitudes and behaviour** towards LGB individuals; specifically in relation to homophobic hate crime and violence; harassment both inside and outside the workplace and homophobic bullying in schools; and
- **promoting positive attitudes** towards LGB individuals; and
- **raising awareness of the rights** of LGB people; both amongst LGB people themselves and amongst those with responsibilities under the sexual orientation equality legislation.

1.5 We recommend strategic action in the following areas, which include the above mentioned priority areas.

Tackling prejudicial attitudes and behaviours

- tackle prejudicial attitudes and behaviour on the grounds of sexual orientation - with a particular focus on action to tackle homophobic hate crime and violence; homophobic harassment both inside and outside the workplace; and homophobic bullying in schools and homophobia in sport;
- promote positive attitudes towards LGB individuals; for example, by action taken by political leaders, the media,

public bodies, private and voluntary sector employers and schools and education bodies.

Promoting LGB equality inside and outside the workplace

- raise awareness of the rights of LGB people, including through the promotion of their rights relating to equality, and remove barriers to their accessing equality rights;
- promote sexual orientation equality in employment and vocational training; and
- embed equality of opportunity for pupils of different sexual orientation within education;
- remove barriers experienced by LGB individuals when accessing goods and services, including in areas such as accessing health care and blood donation; and
- tackle barriers associated with LGB people with multiple identities, for example, older LGB individuals, or disabled LGB people.

Strengthening legal protections

- reform sexual orientation equality law so as to ensure robust legislative protection for LGB individuals against discrimination and harassment, as well as to strengthen enforcement of the legislation;
- introduce legislation that permits same -sex marriage and provides heterosexual couples access to civil partnerships on the same basis as that available to same sex couples;
- extend the scope of adoption legislation so as to allow unmarried couples, those in civil partnership and same sex couples to apply to be considered as adoptive parents.

Delivering LGB equality

- 1.6 We recommend that the Executive, Departments and other key stakeholders address the above issues, including via the proposed Sexual Orientation Strategy.
- 1.7 In order to ensure the ensure both the successful implementation of these strategic actions, and that those actions result in meaningful and tangible outcomes for the LGB community in Northern Ireland, we further recommend:

- visible political, civic and community **leadership** in order to achieve the vision and promote and sustain change;
- a focus on the robust **monitoring and evaluation** of actions together with a focus on improving **outcomes** for LGB individuals;
- a **co-ordinated approach** across the public, private and voluntary community sector in order to address barriers and to promote and share good practice;
- a commitment to **partnership working** with the LGB sector and the need to empower and build the capacity of LGB individuals and representative groups.

The Sexual Orientation Strategy

- 1.8 The specific current context for our recommendations is the Executive's proposal to develop and consult on a sexual orientation Strategy. The Executive made it clear in its Programme for Government that one of the building blocks required to address the challenges of disadvantage and inequality that afflict Northern Ireland society is the development of the sexual orientation action plan.¹
- 1.9 We welcome the recent commitment in the Executive's Strategy, *Together - Building a United Community*² to produce a sexual orientation Strategy by the end of 2013, following a public consultation exercise.
- 1.10 We consider that the publication of a robust, outcome focused, and comprehensive sexual orientation Strategy will send a strong statement of the Executive's commitment to promoting equality for LGB people in Northern Ireland.

¹ <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>

² *Together - Building a United Community, 2013*
http://www.ofmdfmi.gov.uk/together_building_a_united_community.pdf

2 Introduction

- 2.1 The Equality Commission has particular duties under the sexual orientation equality legislation.³ It has a duty to work to eliminate unlawful sexual orientation discrimination and harassment, to promote equality of opportunity, and to keep the working of the legislation under review.
- 2.2 The Commission is also empowered under Schedule 9 of the Northern Ireland Act 1998 to, *inter alia*, offer advice to public authorities and others in connection with the duties imposed by Section 75 of the Act⁴. It is also empowered to authorise investigations into alleged failures by such authorities to comply with equality scheme commitments.
- 2.3 We have set out below in detail the range of strategic issues, including priority areas for strategic action, which we recommend that the Executive, Departments and other key stakeholders address the following strategic issues, including via the proposed Sexual Orientation Strategy.
- 2.4 We believe that the taking of proactive measures by public bodies to promote equality of opportunity for LGB people is consistent with their existing legal duties towards LGB people under Section 75 of the Northern Ireland Act 1998.⁵
- 2.5 We welcome the recent commitment in the Executive's Strategy, *Together - Building a United Community*⁶ to produce a sexual orientation Strategy by the end of this year, following a public consultation exercise.
- 2.6 In developing our policy priorities and recommendations, we have drawn on our experience of dealing with sexual orientation discrimination complaints, as well as our work in promoting sexual orientation equality amongst employers, service providers and public bodies. We have also drawn on the findings and recommendations of independent research.

³ The Employment Equality (Sexual Orientation) Regulations (NI) 2003 and The Equality Act (Sexual Orientation) Regulations (NI) 2006.

⁴ To have due regard to the need to promote equality of opportunity between people belonging to nine equality categories including sexual orientation and to have regard to the desirability of promoting good relations between three equality categories .

⁵ Section 75 places a duty on public authorities to have due regard to the need to promote equality of opportunity for people of different sexual orientation.

⁶ *Together - Building a United Community*, 2013

http://www.ofmdfmi.gov.uk/together_building_a_united_community.pdf

Our policy priorities and recommendations have also been informed by our engagement with LGB individuals, representative organisations in the LGB sector and other stakeholders.

- 2.7 We will continue to engage proactively with a wide range of key stakeholders, including OFMDFM, MLAs, Assembly Committees and representatives from the LGB sector in order to raise awareness of, and secure support for, our policy recommendations. We may further refine our recommendations as a result of this engagement.

3 Priority areas

- 3.1 We recommend that **priority areas** for strategic action are:

- **tackling prejudicial attitudes and behaviour** towards LGB individuals; specifically in relation to homophobic hate crime and violence; harassment both inside and outside the workplace and homophobic bullying in schools; and
- **promoting positive attitudes** towards LGB individuals; and
- **raising awareness of the rights** of LGB people; both amongst LGB people themselves and amongst those with responsibilities under the sexual orientation equality legislation.

- 3.2 We recommend strategic action in the areas which follow, **which include the above mentioned priority areas.**

4 Tackling prejudicial attitudes and behaviour

4.1 The Commission considers that tackling prejudicial attitudes and behaviour towards LGB individuals is a **priority area** for strategic action. We recommend specific action to tackle **homophobic hate crime** and violence; **harassment** both inside and outside the workplace and **homophobic bullying** in schools.

4.2 We outline our specific recommendations in relation to each of these areas below, together with our recommendations on tackling **homophobia in sport**.

Prejudicial Attitudes

4.3 Discrimination and prejudice limit the ability of LGB people to live autonomous lives and to fulfil their potential. It can restrict their ability to access or remain in employment or access day to day services. It not only causes deep personal hurt and distress to LGB individuals but violates their dignity as human beings.

4.4 Tackling prejudice and discrimination against LGB people not only benefits LGB individuals but the local communities in which we live and Northern Ireland society as a whole. Discrimination is both costly and damaging to Northern Ireland society. It damages social cohesion and inhibits the ability of individuals to maximise their potential.

4.5 Negative or stereotypical attitudes towards LGB people can, for example, result in their access to services either being denied or restricted; being excluded from jobs including public life posts; being subjected to harassment, hate crime, homophobic bullying or violence; or in being socially isolated. In turn, such treatment can have a significant detrimental impact on their mental and/or physical wellbeing.

4.6 Independent research commissioned by the Equality Commission reveals the high levels of prejudicial and discriminatory attitudes of the general public in Northern Ireland towards LGB people.

- For example, the Commission's most recent Equality Awareness Survey 2011⁷ has found that, whilst there was a decline in negative attitudes towards LGB people since 2008, there was not a corresponding increase in positive attitudes.⁸
- In addition, the survey shows high levels of negative attitudes towards LGB people in specific scenarios, such as in the workplace or in the local community. In particular, it found that more than two fifths (42%) of respondents would mind if an LGB person was in a close relationship with a relative, while 27% minded having an LGB person as a neighbour and 22% minded having an LGB person as a work colleague. These negative attitudes towards LGB people in specific scenarios are broadly similar or higher than the findings in the 2008 survey.

Tackling Hate crime

- 4.7 The Commission made it clear in its *Statement on Key Inequalities in Northern Ireland* that working to counter prejudice and to promote good relations is intrinsic to reducing inequality.⁹ It highlighted, in particular, the need to tackle racial prejudice, sectarianism, disability hate crime, and homophobic violence.
- 4.8 The level of prejudice against LGB individuals is highlighted by the nature and degree of hate crime on the grounds of sexual orientation. For example, between 1 April 2012 to 31 March 2013, 149 homophobic crimes were recorded, with the number of homophobic crimes and incidents increasing by almost a quarter compared with the previous year.¹⁰ In addition, the vast

⁷ *Do you Mean Me? Discrimination: Attitudes and Experience in Northern Ireland*, ECNI, June 2012, www.equalityni.org

⁸ Decline of 21% in 2008 to 15% in 2011, with the proportion of those holding 'neutral' views increasing.

⁹ The Equality Commission's *Statement on Key Inequalities in Northern Ireland, 2007*, www.equalityni.org

¹⁰ Homophobic incidents rose by 23% and homophobic crimes rose by 24.2% between 2011/12 and 2012/13. Trends in hate-motivated incidents and crime recorded by the Police in Northern Ireland 2004/05 - 2012/13, PSNI, July 2013 <http://www.psnipolice.uk>

majority if homophobic hate crime involves violence against the person.¹¹

- 4.9 Recent statistics also reveal that in 2012/13, the sanction detection rate for crimes with a homophobic motivation tended to be lower than those for all crimes recorded by the police, regardless of crime type.¹² In addition, a report in 2012 on *Criminal Justice Responses to Hate Crime in Northern Ireland* has raised serious concerns at the low level of referrals of victims of hate crime, including homophobic hate crime, to Victim Support.¹³
- 4.10 A report by the Northern Ireland Policing Board, *Human Rights Schematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgendered individual*¹⁴ in 2012 also highlights the low detection rates in relation to non-sectarian hate crime (including homophobic hate crime).¹⁵ The report further highlights the fact it is widely accepted, including by the Police Service, that hate crime is underreported.¹⁶ High levels of homophobic hate crime and under reporting of homophobic incidents by victims of hate crime is also clear from the Rainbow Project survey of LGB individuals experiences of hate crime in 2009.¹⁷
- 4.11 It is also of note that gay men are particularly vulnerable to being subjected to homophobic hate crime, with statistics

¹¹ It will be also noted in 2012/13, violence against the person offences represented 69% of all crimes with a homophobic motivation.

¹² Trends in hate-motivated incidents and crime recorded by the Police in Northern Ireland 2004/05 - 2012/13, PSNI, July 2013 <http://www.psni.police.uk>

¹³ Jarman, N. (2012): *Criminal Justice Responses to Hate Crime in Northern Ireland*, Institute for Conflict Research. Available at: <http://www.conflictresearch.org.uk/9E73E24A-19AD-43D0-AF5C-861115B2F468/FinalDownload/DownloadId-B5E033D7613A69856FA55E7968F7CC01/9E73E24A-19AD-43D0-AF5C-861115B2F468/Resources/Documents/Report%2001%20Complete%20Low%20Res.pdf>

¹⁴ Human Rights Schematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgendered individual, Human Rights and Professional Standards Committee, Northern Ireland Policing Board, March 2012

¹⁵ It highlights that the detection rates for non-sectarian hate crime are considerably below those of sectarian hate crime and suggest that a focused approach (which was adopted in relation to sectarian hate crime) to a particular category of hate crime can have tangible results. It highlights the detection rate of 17.5% for homophobic-motivated crime is significantly below average. Of the 137 crimes recorded during 2010/11 as having a homophobic motivation, the vast majority (86 out of 137) involved violence against a person.

¹⁶ It states that the number of reports of hate crimes and incidents received by the PSNI does not represent the true scale of the problem in Northern Ireland.

¹⁷ Rainbow Project . *Through our eyes*, 2009 www.rainbow-project.org

revealing that between 73% and 86% of victims of homophobic crimes over the last six years being male¹⁸ ; which reinforces the need, as set out below in more detail, for public bodies and others to address particular issues faced by LGB people with multiple identities.

4.12 Further, the Commission has also supported a sexual orientation discrimination case which settled in 2012 which involved allegations that the PSNI had failed to adequately investigate reported homophobic hate crimes.¹⁹

4.13 We welcome the fact that the Department of Justice has taken steps to address hate crime through the new Community Safety strategy and has published a hate crime action plan which includes a range of priorities to tackle hate crime and address underreporting including an independent reporting system for recording hate crime²⁰.

Recommendation

4.14 The Commission recommends by the Executive takes effective action to prevent, and detect homophobic hate crime; support victims of homophobic hate crime and encouraging the reporting of homophobic hate crime; increasing awareness of LGB issues within key criminal justice agencies.

Harassment

4.15 A key issue facing LGB individuals is harassment both inside and outside the workplace. For example, the Commission received 72 enquiries/applications for assistance from individuals who believed they had been discriminated against on the grounds of their sexual orientation between 1 April 2012 and 31 March 2013.²¹ Almost 29% of these enquiries related to harassment either inside or outside the workplace.

¹⁸ *Trends in hate-motivated incidents and crime recorded by the Police in Northern Ireland 2004/05 - 2012/13*, PSNI, July 2013 <http://www.psni.police.uk>

¹⁹ *Creelan & McCauley v PSNI*, June 2012

²⁰ DOJ (2013): *Hate Crime action plan*. Available at: <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/community-safety-strategy-action-plan.htm>

²¹ 2% of all enquiries

- 4.16 The majority of those harassment enquiries related to harassment within the workplace.²² However, the number of enquiries relating to harassment outside the workplace has substantially increased compared to those received in the previous year²³.
- 4.17 Further, we have supported a number of discrimination cases which reveal the shocking nature and extent to which some LGB employees have been subjected to homophobic harassment in the workplace.²⁴
- 4.18 It is also of note that the recent *Equality Awareness Survey 2011* has highlighted that LGB people were more likely to report being harassed because they belonged to a particular group (38%) than heterosexual respondents. Further the *Equality Awareness Survey 2011* revealed as regards public perception of unfair treatment that most respondents were of the view that LGB people, of all equality groups, were the most likely to be subjected to harassment.

Recommendations

The Commission recommends the Executive takes effective action to prevent homophobic harassment both inside and outside the workplace and to encourage employers to promote LGB equality within the workplace.

As set out in more detail later in this document, there are a wide range of proactive steps that employers can take, both to prevent harassment within the workplace, and to build a culture that is openly supportive of LGB equality.

Homophobic bullying in schools

- 4.19 The Commission is clear that the education of children and young people has an important role in shaping people's views and their relationships with others. We consider that schooling

²² Over this period, the Commission received 50 enquiries relating to harassment in the workplace and 22 relating to harassment outside the workplace

²³ There are only 2 enquiries relating to harassment outside the workplace (3.23%) during 2010/11, whereas the number increased to 11 (13.41%) during 2011/12

²⁴ See for example, *A Gay Man v Lesa McCann and Trevor McCann trading as The Cellar Bar*, and *Christopher Parr v Moy Park Ltd*, both cases settled in 2011/12 and details are available in ECNI Decisions and Settlements Review 2011/12, www.equalty.org

can help to counteract the negative views and prejudice that exist in our society. We are also clear that schools should provide a safe and supportive environment for all children, regardless of their sexual orientation, to learn in.

- 4.20 The need to embed equality and good relations in education has also recently been recognised by the Executive in *Together Building a United Community* (TBUC) which emphasises that “teaching community relations and addressing issues of intolerance and prejudice requires a systematic approach through the education system.”
- 4.21 In 2008, the Commission highlighted in ‘*Every Child an Equal Child*²⁵’ the difficulties faced by the LGB pupils in terms of hostility and bullying. In addition, evidence from the Young Life and Times survey²⁶ has highlighted significantly higher levels of school bullying experience among same-sex attracted individuals.
- 4.22 The Commission’s evidence in *Every Child an Equal Child*²⁷ recognised the lack of empirical data on the presence of LGB pupils in the schools system in Northern Ireland and the effects of homophobia on educational attainment. We made it clear that this lack of data indicates the need for further research in this area.
- 4.23 Further, research from the Rainbow Project entitled *Left out of the Equation*²⁸ highlights inequalities experienced by LGB young people in schools. It also highlights underreporting of homophobic bullying and harassment by LGB pupils to school authorities.
- 4.24 In addition, findings in the Commission’s research on *Indicators of Equality and Good Relations in Education* highlighted that whilst all schools are required to have an anti-bullying policy in place, it appears that information on the content of each policy (for example, the range and types of bullying covered) and the

²⁵ ‘Every Child an Equal Child - An Equality Commission Statement on Key Inequalities in Education and a Strategy for Intervention’ - <http://www.equalityni.org/archive/pdf/ECkeyinequalities.pdf>

²⁶ Young Life and Time Survey
http://www.ark.ac.uk/ylt/results/PCC_YLT_mental_health_report.pdf

²⁷ See footnote 13.

²⁸ *Left out of the Equation*, Rainbow Project, October 2011, www.rainbow-project.org

number of bullying incidents recorded under each policy is not routinely collected or considered.²⁹

- 4.25 We have also expressed concern that there appears to be reluctance by Northern Ireland schools generally to address homophobic bullying with the same rigour as other forms of bullying.³⁰
- 4.26 A report by the Northern Ireland Policing Board, *Human Rights Thematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgendered individual*³¹ Review, also highlights that homophobic language is particularly problematic in schools. Whilst the report commends the PSNI for taking the lead in discouraging the use of homophobic language in schools, it recommends that more is required from schools, the statutory agencies and private individuals to challenge inappropriate language and to report any homophobic incidents they witness to the police, to teachers and to supervisors in a workplace.
- 4.27 Further, *Research into the nature and extent of public bullying in schools in the north of Ireland*³² commissioned by the Department of Education in 2011 recommended that research was carried out to understand the attitudes of parents, pupils and teachers to homophobic bullying in Northern Ireland and to identify appropriate strategies to address this. The research also recommended a series of actions aimed at addressing all forms of bullying in schools.
- 4.28 In addition, the UN Committee on the Rights of the Child in its Concluding Observations on the UK in 2008, expressed its concern certain groups of children, including LGBT children continued to experience discrimination and social stigmatisation.
- 4.29 In particular, it recommended action by the UK Government to strengthen its awareness-raising and other preventative activities, and if necessary, affirmative action for the benefit of

²⁹ *Indicators of Equality and Good Relations in Education, ECNI, June 2012, www.equalityni.org*

³⁰ See our response³⁰ to the Department of Education's consultation on *Every School A Good School*, www.equalityni.org

³¹ Human Rights Schematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgendered individual, Human Rights and Professional Standards Committee, Northern Ireland Policing Board, March 2012

³² www.deni.gov.uk, final report October 2011

vulnerable groups of children including LGBT children.³³ It also recommended that the UK Government intensify its efforts to prevent bullying and violence in schools.

- 4.30 The need to tackle homophobic bullying in schools has also been recently recognised by the FRA which recommended that EU Member States ensure that schools provide a safe and supportive environment for young LGBT persons, free from bullying and exclusion. It recommended that objective information on sexual orientation is part of the school curricula to encourage respect and understanding among staff and students as well as training for educational professionals on how to handle LGBT issues and deal with incidents of homophobic bullying.

Recommendations

We recommend:

- steps to ensure that schools treat homophobic bullying as seriously as other forms of bullying;
- action to promote tolerance and respect for all pupils, regardless of their sexual orientation; and
- further research into the presence of LGB pupils in the schools system in Northern Ireland, the experiences of LGB pupils and the effects of homophobia on educational attainment and clear action to address research findings.

Homophobic attitudes in sport

- 4.31 A *Literature Review of Sexual Orientation in Sport*³⁴ undertaken across the UK has concluded that whilst there is a basic understanding among stakeholders that there were issues relating to LGBT people that have to do with participation, discrimination and homophobia in sport, there was a lack of expertise (and in some cases desire) to do what is required to

³³ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

³⁴ *Literature Review of Sexual Orientation in Sport*.³⁴ *A Review of Sexual Orientation in Sport*, Brunel University commissioned by SportUK, SportNI, Sport Wales and Sport England, 2008
<http://www.sportni.net/SCNI/Core/CrawlerResourceServer.aspx?resource=1e0dd5d5-6923-444f-bfa0-146fc971f06f>

address them. It also highlighted that lack of data means that these issues can be ignored or remain hidden.

- 4.32 In addition, it recognised that sport can be a powerful influence both on young people’s own personal development and on their attitudes to others, so young people’s openness to diversity is likely to continue even after their personal involvement in sport ceases. In particular, it concluded that ‘there was no clear leadership on this issue and even some in government positions appear hesitant to take a stand on policy.’
- 4.33 Further, it is of note that in 2012, the Equality Network in Scotland, in its major research report *Out for Sport: Tackling Homophobia and Transphobia in Scottish Sport* highlighted the lack of specific action being taken by the Scottish Government and Scottish sports bodies to tackle homophobia in sport or increase LGB participation in sport.³⁵
- 4.34 The Stonewall report in Great Britain has also highlighted the particularly high level of homophobic abuse in football and remarks on the “culture of fear where gay players feel it is unsafe to come out”.³⁶
- 4.35 More recently research in Wales³⁷ has indicated that many LGB people were not participating in sport because of they had experienced the sporting environment to be “unpleasant and safe”. It identified a range of challenges including tackling behaviour change in schools, community sport and professional sport.
- 4.36 It is important to note that a number of proactive steps to address homophobia in sport have been taken by sporting organisations across the UK, including in Northern Ireland.

³⁵ *Out for Sport: Tackling Homophobia and Transphobia in Scottish Sport, 2012, Equality Network in Scotland*
<http://www.equality-network.org/wp-content/uploads/2013/03/Out-for-Sport-Summary-Report.pdf>

³⁶ *Leagues Behind: Football failure to tackle anti-gay abuse, Stonewall, 2012*
<http://www.kickitout.org/files/1eb24eb6-/Leagues%20Behind.pdf>

³⁷ *LGB people in Sport: Understanding LGB sports participation in Wales, Dec 2012, Sport Wales*
http://www.sportwales.org.uk/media/1091778/sugar_styled_doc_eng_-_lgb_final.pdf

4.37 For example, SportNI, in conjunction with Sport England, Sport Scotland, Sport Wales and UK Sport have recently signed up to the GEO Charter on Homophobia and Transphobia in sport. These organisations have also developed, and promote amongst sporting bodies, an Equality Standard for Sport. This Standard is a framework for assisting sports organisations to widen access and reduce inequalities in sport and physical activity for under-represented individuals, groups and communities.

4.38 The UK Government in its action plan *Working for LGBT Equality: Moving Forward* has included the tackling of homophobia in sport as one of its key priorities.³⁸

Recommendation

4.39 The Commission recommends further action by the Executive, in partnership with the sports sector, to introduce initiatives designed to tackle homophobia in sport in Northern Ireland.

4.40 We recommend action to better understand the nature and extent of homophobia in sport in Northern Ireland, steps to raise public awareness of homophobic prejudice in sport; encouraging sporting organisations and schools and local clubs to visibly challenge homophobic behaviour, focusing on any sports where homophobic abuse is particularly prevalent; and encourage openly LGB sporting role models in a range of sports.

³⁸ *Working for LGBT Equality: Moving Forward*, March 2011, www.equality.gov.uk

5 Promoting positive attitudes

5.1 The Commission considers that **promoting positive attitudes** towards LGB people is a **priority area** for strategic action.

5.2 Demeaning stereotypes, the absence of any positive portrayal of LGB people or a lack of open support for LGB equality can have a significant negative impact on the day to day lives of LGB individuals.

5.3 Clearly, a number of key stakeholders can play a key role in promoting positive attitudes, including political leaders, the media, public bodies, private and voluntary sector employers and schools and education bodies.

Leadership

5.4 The need for **strong and positive political leadership** at all levels in order to effectively promote positive attitudes towards LGB people has been recently recognised in the survey report³⁹ by the Fundamental Rights Agency on the experiences of lesbian, bisexual, gay and transgender (LGBT) people across the EU.

5.5 Importantly, this survey revealed that there is a clear link between offensive language by politicians towards LGBT people and the level of perceptions of discrimination by LGBT people within communities; with comparatively lower levels of LGBT indicating that they had been discriminated against in countries where politicians rarely used offensive language about LGBT people.

Public Bodies and Employers

5.6 **Public bodies**, including Departments and local authorities, as well as **private and voluntary sector employers**, can also make a significant contribution to promoting positive attitudes towards LGB people, including by taking measures to promote positive attitudes towards LGB employees, office holders and customers.

³⁹ EU LGBT survey-Results at a glance, 2013, www.fra.europa.eu

- 5.7 For example, they can promote positive attitudes through their external and internal communication policies and practices; including communications to staff and customers and visible support for external LGB initiatives or events. Other examples, including openly working in partnership with the LGB sector to deliver services to the LGB community.
- 5.8 They can also take steps to increase the participation of LGB people in public life and the visibility of LGB people in society.
- 5.9 In addition, both local and national **media**, through the positive and supportive portrayal of LGB issues, can have a profound impact on promoting positive public attitudes towards LGB people.

Schools and Education Bodies

- 5.10 **Schools and education bodies** can also significantly help promote positive attitudes towards LGB pupils through challenging negative stereotypes of LGB people, and promoting a greater understanding of LGB equality issues within the class room (for example, through Relationships and Sexuality Education).
- 5.11 As explored in more detail below, steps can be taken to more effectively embed equality of opportunity for LGB pupils within curriculum support materials and good practice guidance; and by supporting teachers to deliver steps are taken to ensure that schools are supported to deal with sexual orientation issues in a sensitive, non-discriminatory way.

Recommendations

- 5.12 We recommend proactive action is taken through key stakeholders, including political leaders at a national and local level, public authorities, private and voluntary sector employers, schools and education bodies, and the media, to promote positive attitudes towards LGB people.

6 Promoting LGB equality inside and outside the workplace

Raising awareness of the rights and removing barriers to accessing rights

- 6.1 As set out above, **raising awareness of the rights** of LGB individuals, both amongst LGB people themselves and amongst those with responsibilities under the sexual orientation equality legislation, is a **priority area** for strategic action.
- 6.2 It is of note that the Commission's most recent Equality Awareness Survey 2011⁴⁰ has found that only 22% respondents were aware that they had protection under equality law against discrimination on the grounds of sexual orientation.
- 6.3 In addition, the research jointly commissioned by the Equality Commission and the Equality Authority entitled *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*⁴¹ has stressed the need for action by a number of key stakeholders to promote and raise awareness of the rights of LGB people under equality law.
- 6.4 Raising awareness of the rights of LGB individuals amongst those with responsibilities under the sexual orientation equality legislation, such as employers, service providers, public bodies and education providers, is also essential.
- 6.5 This can be achieved through a number of ways including promotional campaigns, promotion and sharing of good practice, and partnership working, including with representatives from the LGB sector.
- 6.6 Clearly there is a role for a number of key stakeholders, including the Government, the Equality Commission, LGB representative organisations, trade unions, and Citizens Advice Bureau, in raising awareness of rights amongst LGB individuals

⁴⁰ *Do you Mean Me? Discrimination: Attitudes and Experience in Northern Ireland*, ECNI, June 2012, www.equalityni.org.

⁴¹ *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*, J Walsh, C Conlon, B Fitzpatrick and U Hansson, 2008, www.equalityni.org

and in raising awareness amongst employers, service providers and others of their responsibilities.

- 6.7 It is also important to particularly recognise the key role that LGB individuals and representative organisations play in raising awareness of rights amongst the LGB community and in working in partnership with employers, service providers and others to promote LGB equality.
- 6.8 As stressed later, it is vital that capacity is built within the LGB sector in order to enable it to support and to bring forward such proactive initiatives.
- 6.9 In addition, to taking action to raise awareness of LGB rights, there is also a need for strategic action by a number of key stakeholders to remove barriers to LGB accessing their equality rights.
- 6.10 Research jointly commissioned by the Equality Commission and the Equality Authority entitled *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*⁴² has made it clear that LGB individuals experience barriers to accessing their equality rights due to complex reasons that lie in the status and invisibility of LGB people within society, as well as issues associated with the legal framework.
- 6.11 The report contained a series of recommendations, both legislative and non-legislative. The recommendations were aimed at a range of stakeholders including the Equality Commission, LGB representative organisations, the Northern Ireland government, trade unions, legal aid bodies, the legal profession, etc.
- 6.12 A number of the recommendations arising out of that research relating to these changes have been incorporated in the Commission's recommendations for reform of the equality legislation⁴³ and in its recommendations for promoting LGB equality within the workplace and in service delivery.

For example, legislative changes include extending the time limits of lodging discrimination complaints; introducing

⁴² Ditto

⁴³ See section on 'Improving legal protections'.

representative actions and the power for the Commission to bring complaints in its own name; and empowering tribunals to make discretionary orders to restrict publicity in sensitive cases.

Recommendation

- 6.13 The Commission recommends strategic action aimed raising awareness of the rights of LGB individuals, both amongst LGB people themselves and amongst those with responsibilities under the sexual orientation equality legislation.

Promoting LGB equality in the workplace

- 6.14 It is clear from our experience of dealing with sexual orientation discrimination that targeted action is need by employers across all sectors to promote a supportive and inclusive workplace for LGB employees.
- 6.15 For example, the majority of enquiries which we receive as regards discrimination on the grounds of sexual orientation relate to the treatment of LGB employees in the workplace.⁴⁴ As indicated earlier, it is clear that the majority of harassment enquiries which we receive relate to harassment within the workplace, and we have supported a number of cases which concerned shocking incidents of harassment in the workplace.
- 6.16 Further, the report '*Through our eyes: Experiences of Lesbian, Gay and Bisexual People in the Workplace*', produced by the Rainbow Project in conjunction with the Department for Social Development⁴⁵ has highlighted the barriers experienced by LGB people in employment in Northern Ireland.
- 6.17 In particular, it highlights the results of a survey that show that 26.9% of LGB respondents working in the private sector and 24.5% LGB respondents working in the public sector conceal their sexual orientation in the workplace.

⁴⁴ 50 enquiries relating to employment (69.44%) were made to the Commission in 2012/13.

⁴⁵ *Through our eyes: Experiences of Lesbian, Gay and Bisexual People in the Workplace*, by the Rainbow Project in conjunction with the Department for Social Development, 2011
http://www.rainbow-project.org/assets/publications/TOE_mcd.pdf

- 6.18 Further, the survey reveals that negative comments about LGB people are frequently made within the workplace across all sectors.⁴⁶
- 6.19 Research in Great Britain has also highlighted the barriers employers face in developing LGBT friendly workplaces and has, for example, concluded that the problems encountered in the workplace would ‘seem to stem from wider attitudes towards LGBT’ and that Government action to tackle prejudice was seen as important. It made a series of recommendations on how Government can encourage employers to develop LGBT friendly workplaces.⁴⁷
- 6.20 We support the initiative commissioned by the Department for Employment and Learning in conjunction with the Rainbow Project to promote amongst local employers the business case for fostering LGB equality in the workplace. The Commission has also undertaken a range of initiatives with public, private and voluntary sector employers aimed at promoting and sharing good employment practice as regards LGB employees.
- 6.21 It is of note that research jointly commissioned by the Equality Commission and the Equality Authority entitled *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*⁴⁸ recommended that LGB non-government organisations (NGOs) explore the feasibility of implementing an ‘e-quality mark’, designed to acknowledge best practice amongst employers and service providers.
- 6.22 We welcome the recent initiative shortly to be implemented by representatives from the LGB sector encouraging employers to become diversity champions. This is visible way in which employers can show clear commitment to LGB equality, both to their employees and customers.
- 6.23 It is clear from work taken across the UK by employers that there are a range of proactive steps that employers can take to

⁴⁶ The survey reveals that 42.5% of respondents from the private sector, 40% from the public sector and 31% from the community, voluntary and non governmental sector have hear negative comments about LGB people from a colleague in the workplace.

⁴⁷ Barriers to employers in developing LGBT friendly workplaces, 2011, NIESR, <http://www.homeoffice.gov.uk/publications/equalities/research/LGBT-barriers-equality-workplace/LGBT-equality-workplace?view=Binary>

⁴⁸ *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*, J Walsh, C Conlon, B Fitzpatrick and U Hansson, 2008, www.equalityni.org

promote LGB equality within the workplace. This includes, for example:

- showing visible support from senior management to creating an organisational culture that supports LGB equality for employees;
- setting up LGB networks groups within the workforce and where appropriate, having LGB trade union representatives to support and represent LGB employees;
- ensuring policies relating to accessing benefits do not unfairly exclude same sex partners;
- communicating 'zero tolerance' of homophobic harassment in the workplace by, for example, ensuring effective harassment policies that explicitly cover homophobic bullying are in place, and taking robust steps to address complaints of homophobic harassment;
- implementing diversity training for employees and office holders in order to raise awareness of the rights of LGB employees within the workplace and the rights of LGB customers/clients, to explain how discrimination and harassment can occur and the leadership behaviours that are needed to promote LGB equality;
- undertaking partnership working with the wider LGB community in Northern Ireland; for example, in order to deliver joint workplace initiatives, show visible corporate support for LGB equality, or to seek their views on the design and delivery of services;
- profiling openly LGB role models in their organisation so as to promote an inclusive culture for other LGB employees.
- monitoring and evaluating initiatives undertaken within the workplace to promote LGB equality in order to ensure tangible outcomes are achieved.

Recommendations

6.24

We recommend the Executive takes targeted action, working in conjunction with the ECNI and in partnership with the LGB sector, aimed at:

- the provision of additional support, advice and information to employers on making their organisations more LGB friendly, particularly Small Medium Sized (SMEs) businesses;

- raising awareness of responsibilities under the equality legislation and sharing of good practice;
- additional research on the establishing the evidence base on the business benefits of having LGB friendly workplaces;
- encouraging employers to promote LGB equality in the workplace through the range of potential actions highlighted above.

Promoting LGB equality outside the workplace

- 6.25 It is clear that LGB people experience specific barriers to equality outside the workforce - when accessing goods and services, including access to health services.
- 6.26 For example, the Commission's *2011 Equality Awareness Survey* has shown that LGB people were more likely than heterosexual respondents to report unfair treatment when trying to access public services (21%) or when trying to use shops, bars and restaurants (26%), or trying to buy or rent property (21%) or been harassed because they belonged to a particular group (38%).
- 6.27 The Commission has also received complaints from LGB individuals in which they have indicated that they have experienced barriers to accessing services due to their sexual orientation. We have also supported a number of sexual orientation discrimination cases against service providers which reveal the discriminatory attitudes that some service providers hold towards LGB customers and clients.⁴⁹

Embed sexual orientation equality within education

- 6.28 The Commission recommends that strategic action is taken by the Department for Education, schools and other education bodies to embed equality of opportunity for pupils of different sexual orientation within education
- 6.29 The importance of embedding equality of opportunity and good relations within the school curriculum has long been recognised by the Commission.

⁴⁹ See for example, *Darren Craig v Citybus*, 2011, Decisions and Settlements Review, 2011, www.equalityni.org

- 6.30 In *Every Child an Equal Child*⁵⁰ the Commission makes it clear that there are a number of strategic actions that can be taken to embed equality and good relations in education; including reviewing curriculum support materials and developing good practice guidance, setting strategic actions and outcomes and developing equality and good relations elements to the training programmes for student teachers, existing teachers, heads and governors.
- 6.31 We note that a report in January 2011 by the Education and Training Inspectorate (ETI) into relationships and sexuality education (RSE) recommended a range of areas for improvement, including ‘the implementation of further whole-school training through staff training to include training for staff in the handling of particularly sensitive areas, including sexual orientation.’⁵¹
- 6.32 One of the findings of the research was that there was a clear need to build capacity, both during initial teaching training and continuing professional development, to enable teachers to deal more effectively with the challenges of teaching sensitive issues. The teaching of issues associated with sexual orientation was one of two main areas where the need for further support or guidance was identified.
- 6.33 Further, the need for the statutory curriculum to be more inclusive of LGBT issues has been raised by both the Rainbow Project and the Northern Ireland Human Rights Commission (NIHRC).
- 6.34 In particular, the Rainbow Project in its report *Left out of the Equation: A report on the experiences of LGB young people at school*⁵² raises concerns that whilst the statutory curriculum includes many references to the necessity of children to be educated in human rights, equality and respect for diversity, the curriculum itself only refers to race, sectarianism, sexism and disability and ‘ignores sexual orientation’.

⁵⁰ *Every Child an Equal Child. An Equality Commission Statement on Key Inequalities in Education and a Strategy for Intervention*, 2008 <http://www.equalityni.org/archive/pdf/ECkeyinequalities.pdf>

⁵¹ ETI Report of an evaluation of relationships and sexuality education in post-primary schools: July 2011, www.etni.gov.uk.

⁵² *Left out of the Equation: A report on the experiences of LGB young people at school*, 2011 <http://www.rainbow-project.org/assets/publications/left%20out%20of%20the%20equation%20may%202012.pdf>

6.35 Further, the NIHRC has recommended that “there is therefore arguably a need to align curriculum content more carefully with CRED [community relations, equality and diversity in education] aspirations. In particular, given that there appears to be a teacher reluctance to deal with LGBT issues, there is a danger that the rights of this Section 75 group will not be represented adequately.”⁵³

6.36 We welcome the Department’s recent circular⁵⁴ on RSE to schools in which it made it clear that the Department required each school to have in place a written policy on how it will address the delivery of RSE.

6.37 We further welcome the Department’s commitment, as confirmed in the circular, to liaise with the Council for the Curriculum, Examinations and Assessments (CCEA), to commission a review of existing guidance and develop resources to address any identified gaps in provision.

Recommendations

6.38 The Commission recommends that steps are taken to ensure that schools are supported to deal with sexual orientation issues in a sensitive, non-discriminatory way, including when delivering relationships and sexuality education (RSE) to pupils.

6.39 We further recommend that the Department and other key stakeholders, in line with the aims and objectives of the Department’s CRED policy⁵⁵, takes steps to ensure that curriculum support materials and good practice guidance effectively embeds equality of opportunity for LGB pupils.

Access to Health and Public Services

6.40 In addition, a report produced by the Lesbian Advocacy Services Initiative (LASI) found that lesbian and bisexual women experienced significant barriers to accessing health

⁵³ *Education reform in Northern Ireland: A Human Rights Review*, QUB, commissioned by NIHRC, 2013 www.nihrc.org.uk

⁵⁴ *DE Circular on RSE*, June 2013, http://www.deni.gov.uk/circular_2013_16_-_rse.pdf

⁵⁵ <http://www.credni.org/contents/what-is-cred/>

services in Northern Ireland⁵⁶. In addition, other research conducted in 2007 has identified that one in six LGB people surveyed had experienced forms of discriminatory behaviour in receiving health care.⁵⁷

- 6.41 The Commission has also received complaints from same -sex couples in terms of their ability to access IVF fertility treatment. It is important to ensure the effective targeting of health care services in order to meet the particular needs of LGB people and to remove all unjustifiable barriers to their accessing these services.
- 6.42 We welcome the fact that a number of Departmental Strategies, including the Mental Health Promotion Strategy and the Suicide Prevention Strategy recognise the particular health needs experienced by, and services required by, LGB people.
- 6.43 There is, for example, a clear link between homophobia and poor mental health in Northern Ireland. For example, research⁵⁸ into the mental and emotional health of 16 year olds has confirmed that a group which is particularly vulnerable in terms of their mental health are same-sex attracted males and females.
- 6.44 Research carried out in relation to the mental health of gay young men in Northern Ireland has also revealed that over one third (34.4%) of respondents had been diagnosed with a mental illness at some time in their lives and over one quarter (27.1%) had attempted suicide.⁵⁹
- 6.45 Further, independent research commissioned by OFMdfM on *Equality mainstreaming, policy and practice for LGB people*, has identified that there is a need for a **broad range of action**

⁵⁶ Quiry, M (2007) *A Review of the Impact of Discrimination and Social Exclusion on lesbian and bisexual women's health in NI* (LASI). http://hereni.org/wp-content/uploads/2012/09/invisible_women.pdf

⁵⁷ *Equality mainstreaming, policy and practice for LGB people*, U. Hansson, M. Hurly Depret, B. Fitzpatrick, The Institute of Conflict Research, 2007, <http://www.ofmdfmi.gov.uk/equalitymainstreamingjune07.pdf>

⁵⁸ *The mental and emotional health of 16 year olds in Northern Ireland evidence from the Young Life and Times Survey*, June 2010, http://www.ark.ac.uk/ylt/results/PCC_YLT_mental_health_report.pdf

⁵⁹ The impact of homophobia on young LGB people in terms of high levels of mental ill health and suicide was also raised in the review of Children's Rights in Northern Ireland by the Northern Ireland Commissioner for Children and Young People in 2008.

by **public bodies** to address the inequalities highlighted in the report and made a series of recommendations for change.

6.46 Recommendations aimed at public bodies, which we endorse, included addressing, in conjunction with LGB organisations, the following:

- ensuring effective staff training on LGB issues;
- investigating how their policies and practices may be homophobic and/or heterocentric;
- reviewing their procedures for consulting with LGB organisations;
- ensuring adequate levels of resources are made available to support the work of the LGB community; and
- setting meaningful targets in relation to sexual orientation equality.

6.47 In line with the statutory duty on public bodies under Section 75, there should also be a focus on **positive action measures** to counter disadvantage and opportunities to better promote equality of opportunity for LGB individuals;

Recommendations

6.48 The Commission recommends that the Executive, Departments and other key stakeholders adopts actions aimed at removing barriers experienced by LGB people in when accessing goods and services and the exercise of public functions. We also recommend proactive strategic targeting of services in order to meet the particular needs of LGB people.

Ban on blood donations from gay or bisexual men

6.49 The Commission has raised concerns in relation to the current lifetime ban on blood donations by MSM (men who have sex with men) individuals resident in Northern Ireland.

6.50 We are aware that European Directive 2004/33/EEC, as regards technical requirements for blood and blood components, sets out the permanent deferral criteria for donors and refers to persons whose sexual behaviour puts them at high risk of acquiring severe infectious diseases that can be transmitted by blood.

- 6.51 We also note that following an evidence based review in May 2011, the UK Advisory Committee on the Safety of Blood Tissues and Organs (SaBTO), recommended the lifting of the lifetime ban on blood donation by gay and bisexual men (men who have sex with men). The recommendation was accepted by health authorities in England, Scotland and Wales. The permanent exclusion of men who have had sex with men from donating blood was changed to a 12 month fixed period deferral from the latest relevant sexual contact. A large number of other countries, both EU and non-EU, however, have indefinite bans in place.
- 6.52 We further note that the Health Minister, Edwin Poots MLA, in a statement to the Assembly in September 2011 has indicated that the life time ban on gay men donating blood should remain in place in Northern Ireland.
- 6.53 We welcome the recent decision of the High Court that has ruled that the blood ban in Northern Ireland is ‘irrational’⁶⁰ following a consideration of a judicial review application from individuals seeking leave to challenge the Minister’s decision in relation to the blood ban.
- 6.54 The Commission is of the view that:
- a ban on blood donations from any group, including LGB individuals, must be based on clear scientific evidence and the extent and duration of the ban must be appropriate to the level of risk identified.
 - the current position of a lifetime ban on blood donations by MSM (men who have sex with men) individuals resident in Northern Ireland is inconsistent with the Department’s practice of accepting donated blood from Great Britain, where MSM individuals are permitted to donate blood after a 12 month deferral.

⁶⁰ High Court decision, 11 October 2013, http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20allows%20challenge%20to%20lifetime%20ban%20on%20gay%20men%20giving%20blood/j_j_Summary%20of%20judgment%20-%20In%20re%20JR65%2011%20Oct%2013.htm

Addressing barriers due to multiple identities

- 6.55 It is clear that LGB people can experience barriers to accessing services, as well as being subject to prejudicial attitudes and harassment, due to having a combination of characteristics
- 6.56 For example, research jointly commissioned by the Equality Commission and the Equality Authority entitled *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law* has identified that, as regards accessing their equality rights, that young LGB people and those living in rural settings were particularly vulnerable.⁶¹
- 6.57 Further, research carried out in Great Britain has highlighted that older LGB people have been overlooked in health and social care legislation, policy, research, guidance and practice, which assumes services users are heterosexual. It concludes that ‘existing evidence points to discrimination and anticipation of negative treatment when older LGB people access services.’
- 6.58 In addition, a small scale study⁶² undertaken by the Northern Ireland Human Rights Commission, focused on the experiences of young lesbians, gay men and bisexual people in Northern Ireland. The research provided evidence of prejudice, homophobia and violence experienced by young LGB people, and of the isolation they often experience both socially and within their families.
- 6.59 In relation to health services, it found that young LGB people encountered prejudice, abuse of human rights (in particular, breaches of privacy and confidentiality), and a lack of responsiveness to their needs. Young people working in the health service also encountered discrimination. The report put forward a series of recommendations in relation to health service professionals and tailored services and support.
- 6.60 In addition, a report produced by the Lesbian Advocacy Services Initiative (LASI) a *Mighty Silence* has highlighted the barriers faced by lesbian women with a disability.⁶³

⁶¹ *Enabling Lesbian, Gay and Bisexual Individuals to Access their Rights under Equality Law*, J Walsh, C Conlon, B Fitzpatrick and U Hansson, 2008, www.equalityni.org

⁶² *Learning to grow up: multiple identities of young lesbians, gay men and bisexual people in Ni*; NiHRC, 2003, www.nihrc.org.uk

⁶³ Lesbian Advocacy Services Initiative (LASI) a *Mighty Silence*, 2002

6.61 Further, a recent report into the experiences of LGB disabled people in Northern Ireland⁶⁴ has, for example, raised the need for greater awareness across all sectors of the particular needs of LGB disabled people and for specific action to address these needs.

Recommendation

6.62 The Commission recommends that the Executive adopts strategic action to raise awareness of the issues facing LGB people with multiple identities and to take action to tackle the barriers they experience and to address their specific needs; including a focus on multiple identity issues within the proposed sexual orientation Strategy.

6.63 We recommend actions such as incorporating multiple identity issues into equality and diversity training for employees, improved monitoring and data collection on multiple identity issues and ensuring that services are reviewed with the aim of removing barriers experienced LGB individuals with multiple identities

⁶⁴ <http://www.rainbow-project.org/assets/publications/Multiple%20Identity%20Multiple%20Exclusions%20and%20Human%20Rights.pdf>

7 Strengthening Legal Protections

7.1 The Commission recommends that strategic action is required to strengthen legal protections for LGB individuals. This includes action to:

- reform **sexual orientation equality law** so as to ensure robust legislative protection for LGB individuals against discrimination and harassment, as well as to strengthen enforcement of the legislation;
- introduce legislation that permits **same -sex marriage** and provides heterosexual couples access to civil partnerships on the same basis as that available to same sex couples;
- extend the scope of **adoption legislation** so as to allow unmarried couples, those in civil partnership and same sex couples to apply to be considered as adoptive parents.

Strengthen Sexual orientation equality law

7.2 The Equality Commission is under a duty to keep the sexual orientation legislation under review and to make recommendations for change where necessary.

7.3 The Commission will shortly publish a full report outlining its proposals for law reform of the sexual orientation equality legislation.

7.4 In summary, the Commission recommends that the sexual orientation legislation is amended to:-

- give stronger protection against sexual orientation harassment; including sexual orientation harassment of employees by clients or customers;
- ensure increased protection against sexual orientation discrimination and harassment by public bodies when carrying out their public functions;
- narrow the scope of the exemption for religious employers in order to ensure effective implementation of the Employment Framework Directive;
- expand the range of lawful positive action measures that employers, service providers and others can take;
- ensure greater protection under the sexual orientation equality legislation for individuals against victimisation;
- introduce protection against multiple discrimination;

- amend the enforcement mechanism for education complaints;
- permit civil partnerships to be registered on religious premises where faith groups wish to hold them;
- increase protection for counsellors against sexual orientation discrimination or harassment;
- improve the powers of the Equality Commission to issue additional codes of practice and to enforce effectively the sexual orientation equality legislation;
- strengthen tribunal powers to ensure effective remedies for complainants bringing sexual orientation complaints and amend tribunal rules and procedures so as to remove barriers to LGB accessing their equality rights;
- remove barriers to LGB people accessing rights by, for example, extending the time limits for lodging discrimination complaints; introducing representative actions and the power for the Commission to bring complaints in its own name; and empowering tribunals to make discretionary orders to restrict publicity in sensitive cases.

Introduce legislation permitting same-sex marriage

- 7.5 The Commission supports the introduction of legislation permitting **same sex marriage** in Northern Ireland, including sufficient safeguards for religious organisations. We also recommend that marriages of same-sex couples in other jurisdictions are recognised as marriages in Northern Ireland and vice versa.
- 7.6 We recommend that there are clear protections within the legislation so as to make sure unequivocally that no religious organisation or individual is forced to marry same-sex couples, whilst also ensuring that those organisations who wish to conduct these marriages can also opt in, as they can for civil partnerships. It is important that rights relating to freedom of religious belief, as enshrined in the European Convention on Human Rights (ECHR), are safeguarded.
- 7.7 We consider that the legalisation of same sex marriage is an equality issue as it furthers the rights of LGB individuals to equality before the law. It is also in keeping with the overall intention of the sexual orientation equality legislation that individuals should not be treated less favourably because of their sexual orientation.

- 7.8 The Northern Ireland Life and Times Survey⁶⁵ in 2012 found clear public support in Northern Ireland for the legalisation of same-sex marriage. In particular, 57% of those surveyed indicated they were in favour of the legalisation of same-sex marriages⁶⁶. Further, there is evidence that there are physical and mental health benefits to allowing same-sex couples to get married.⁶⁷
- 7.9 Marriage is a civil institution as well as a religious one and the State recognises equal rights in other aspects of civil life. We consider that it cannot justify preventing people from marrying unless there are good reasons for doing so and a person's sexual orientation is not a justifiable reason.
- 7.10 We consider that there are parallels between same-sex marriage and divorce in that many people have sincere personal opinions against divorce and many churches do not support divorce and will not facilitate second marriages. However the State has a duty to provide civil divorce to any person or couple who wishes to dissolve a marriage.
- 7.11 In addition, we are of the view that by insisting marriages and civil partnerships are kept separate, organisations and individuals perpetuate the notion that relationships between same-sex couples are not 'as valid' as those between homosexual couples.
- 7.12 We consider that extending marriage to same-sex couples will strengthen, not weaken, marriage as an institution and help ensure it remains an essential building block of society.
- 7.13 We also believe that the inability of same sex couples to involve their faith in the process for formalising their relationships, limits their religious freedom.
- 7.14 We are also concerned that a failure by the Northern Ireland Executive to legalise same sex marriage would mean that LGB people in Northern Ireland, unlike individuals in other parts of the UK (at present England and Wales), will not have the right to have a same-sex marriage. This will result in legislative gaps

⁶⁵ Northern Ireland Life and Times Survey 2012, <http://www.ark.ac.uk/nilt/2012>

⁶⁶ 32% indicated this should not be legalised and 11% didn't know

⁶⁷ For example, research of Hatsenbueler et al, (2011) showed that in 12 months after the introduction of marriage equality in Massachusetts, gay men recorded significantly fewer visits to health facilities for mental or physical health reasons and that health costs consequently fell.

between Northern Ireland and other parts of the UK.⁶⁸ We do not consider that there are good reasons for adopting a different approach in this area than that adopted in some other parts of UK.

Extend civil partnerships to opposite sex couples

- 7.15 The Commission supports the availability of civil partnerships to opposite-sex and same-sex couples on the same basis.
- 7.16 In 2004, in our response⁶⁹ to the consultation on Civil Partnership in Northern Ireland we noted we were *“disappointed that this opportunity has not been used to extend the civil registration process to heterosexual co-habiting couples”*. We also noted *“We fail to understand the reasoning behind excluding opposite sex couples from availing of this process as several other European countries provide civil registration for both same sex and opposite sex couples.”*
- 7.17 We consider that the extension of civil partnerships to opposite sex couples will remove potential discrimination against heterosexuals. Many people do not wish to marry and yet cannot avail of the tax allowances enjoyed by married couples and those in civil partnerships. We consider that access to civil partnership by opposite sex couples would give greater legal and financial security in areas including inheritance, housing in terms of transfer of tenancies and pensions.
- 7.18 We are aware that in England and Wales, civil partnerships are maintained alongside civil marriage and religious marriage. However, civil partnerships are only available to same sex couples.
- 7.19 However, it is of note that the Joint Committee on Human Rights was not convinced by the UK Government’s reasons not to extend civil partnerships to opposite sex couples and it

⁶⁸ It will be noted that the Human Rights Commission has raised concerns with both the UK Government and the Northern Ireland Assembly that this legislative difference has the potential for an unequal level of human rights protection across the UK.

⁶⁹ *Equality Commission for Northern Ireland Response to Civil Partnership: A Legal Status for Committed Same-Sex Couples in Northern Ireland* March 2004
<http://www.equalityni.org/archive/word/CivilPartnershipNIFinal0403.doc>

welcomed the Government's announcement that it would review the matter.⁷⁰

7.20 It asked the UK Government to take into account the potential discrimination that may arise between co-habiting opposite sex couples and civil partners. The Joint Committee on Human Rights received evidence which suggested that there was potential human rights issues in relation to the continued exclusion of opposite sex couples from access to civil partnerships.

7.21 It indicated that "it may amount to unjustifiable discrimination for the law not to provide the same facility for legal recognition of opposite sex couples who could claim that their relationship is analogous to that of civil partners." It stated that "this may lead to less favourable treatment of opposite sex couples in certain contexts, for example, in relation to property rights." It further stated that there must be "a clear justification for excluding opposite sex couples from being able to access the statutory benefits, legal protections and exemptions that apply to civil partners".⁷¹

7.22 We note that, in response, the UK Government maintains that any difference in treatment of opposite sex couples is justified because unmarried opposite sex couples are free to marry in order to gain legal recognition of their relationship, and have therefore chosen instead the less favourable legal treatment of their unmarried relationship.⁷²

7.23 We welcome that fact that the UK Government has recently agreed to carry out a review on this issue that will look at the practical and financial implications of any changes.

Extend the scope of adoption legislation

7.24 The Commission supports the right of unmarried heterosexual couples, people in civil partnerships (either as an individual or as a couple) and same-sex couples (not in civil partnerships) to have the right to apply to be allowed to adopt in Northern Ireland.

⁷⁰Human Rights Joint Committee 2nd report, legislative scrutiny, Marriage (Same sex couples) Bill , June 2013 <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/24/2402.htm>

⁷¹ Ditto

⁷² Ditto

- 7.25 We recommend that Northern Ireland law is amended in line with the rest of the UK and that couples who are not married, those in civil partnerships and same-sex couples are allowed to apply to be considered as adoptive parents.
- 7.26 The Commission has already made it clear in its recent *Shadow Report to the Committee on the Elimination of Discrimination against Women (CEDAW)* that it had concerns that women in same-sex relationships were excluded from adopting.⁷³
- 7.27 We are aware that this issue has been the subject of legal challenge. In particular, in June 2013, the Court of Appeal in Northern Ireland⁷⁴ delivered its judgement in relation to appeal from the High Court decision relating to Judicial Review proceedings brought by the Northern Ireland Human Rights Commission (NIHRC) relating to same-sex adoption.
- 7.28 The NIHRC was concerned that Northern Ireland remained out of step with the rest of the UK regards the ability of unmarried couples to apply to adopt. In England, Wales and Scotland, unmarried couples irrespective of marital status or sexual orientation or whether in a civil partnership are not, can apply to be considered to adopt a child. The NIHRC argued that the blanket ban on unmarried couples, whether heterosexual, homosexual or those in civil partnerships, from being able to apply for adoption as a couple, was unjustifiable discrimination.
- 7.29 We note that the Court of Appeal made it clear that following the Supreme Court's decision in *RG*, that under current domestic law in Northern Ireland, an unmarried heterosexual couple is eligible to be considered for adoption. The judgement also made it clear that once a State decides to extend adoption eligibility to unmarried heterosexuals, then it cannot safely decline to open up adoption to unmarried homosexual couples.

⁷³ http://www.equalityni.org/archive/pdf/CEDAW_2013.pdf - ECNI Shadow Report to CEDAW, 2013

⁷⁴ [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20dismisses%20adoption%20appeal/j_j_Summary%20of%20judgment%20-%20In%20re%20NIHRC%20\(adoption\).htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20dismisses%20adoption%20appeal/j_j_Summary%20of%20judgment%20-%20In%20re%20NIHRC%20(adoption).htm) – Court of Appeal 27 June 2013

- 7.30 The Court of Appeal held that preventing someone from even being considered to be allowed to adopt because of their relationship status was a discriminatory practice.⁷⁵
- 7.31 The Commission supports the decision of the Court of Appeal and the right of unmarried heterosexual couples, people in civil partnerships (either as an individual or as a couple) and same-sex couples (not in civil partnerships) to have the right to apply to be allowed to adopt in Northern Ireland.

⁷⁵ In October 2013, leave to appeal this judgment to the Supreme Court was refused.

8 Delivering LGB equality

- 8.1 The Commission has set out above the range of strategic issues, including priority areas for strategic action, which it recommends that the Executive, Departments and other key stakeholders address, including via the proposed Sexual Orientation Strategy.
- 8.2 However, we consider that there are a number of critical steps that need to be taken in order to ensure both the successful implementation of those actions, and that those actions result in meaningful and tangible outcomes for the LGB community in Northern Ireland.
- 8.3 In summary, these steps include the following:
- visible political, civic and community **leadership** in order to achieve the vision and promote and sustain change;
 - a focus on the robust **monitoring and evaluation** of actions together with a focus on improving **outcomes** for LGB individuals;
 - a **co-ordinated approach** across the public, private and voluntary community sector in order to address barriers and to promote and share good practice;
 - a commitment to **partnership working** with the LGB sector and the need to empower and build the capacity of LGB individuals and representative groups.

Leadership

- 8.4 There must be clear ownership of actions taken to promote LGB equality with robust accountability and **publicly demonstrated leadership**. Successful delivery of the actions should be reflected in the business and development plans, as well as a demonstrable commitment through the deployment of **sufficient resources** to deliver the agreed outcomes.
- 8.5 In addition, **Section 75** of the Northern Ireland Act 1998 places a **duty** on public authorities to have due regard to the need to promote equality of opportunity between persons of different sexual orientation. Government Departments and other public authorities should therefore **lead by example** as employers,

policy makers and service providers in the promoting equality of opportunity for LGB people.

Focus on outcomes, monitoring and evaluation

- 8.6 It is important that strategic actions make a clear and tangible difference to the lives of LGB individuals. There should be focus on achieving outcomes, rather than simply outputs, together with the development of a **robust monitoring and evaluation framework** that will inform progress towards the longer-term vision of the strategic action.
- 8.7 Further, we recommend the development of a set of high level, outcome focused **performance indicators** that will provide baseline data and also monitor change over time; indicators that are specific, measurable, achievable, realistic and time-bound.
- 8.8 It is essential that steps are taken to identify and address **gaps in data** relating to LGB individuals in Northern Ireland so as to ensure effective delivery and monitoring of the strategic actions.
- 8.9 As highlighted in a range of research reports on sexual orientation inequality, there is a **lack of reliable and comprehensive data** on sexual orientation. The absence of reliable data is a major obstacle to measuring progress on equality of opportunity for LGB individuals. Service providers and employers require this information in order to assess whether they need to take action to address inequalities facing LGB people.
- 8.10 For example, research commissioned by the Equality Commission for Northern Ireland on employment inequalities in an economic downturn has highlighted that there is very little labour market data on **employment rates and sexual orientation** in the UK and very little evidence of the employment position of LBGT groups in Northern Ireland. It indicated the need for greater information in relation to employment of LBGT groups and concluded that improved monitoring by employers and other organisations would help

identify the employment needs of LGBT groups in Northern Ireland.⁷⁶

- 8.11 The Equality Commission has also highlighted the limited data, if any, on the presence of gay, young people in the school system, as well as limited information on the effects of homophobia on **educational attainment**.⁷⁷ Although data collection on sexual orientation in Northern Ireland is improving in some areas⁷⁸, it is clear that more needs to be done.
- 8.12 The Equality Commission acknowledges the sensitivities surrounding the collection of monitoring information in relation to sexual orientation. Its **Guidance for public authorities on monitoring** gives practical guidance on how public authorities can monitor on this equality issue, stressing as regards workplace monitoring, the need for employers to create a workplace culture in which employees are not fearful of disclosing their sexual orientation.⁷⁹
- 8.13 The Equality Commission has also stressed the importance of effective **engagement** with LGB individuals and groups so as to enable a public authority understand the barriers which need to overcome and in order to monitor and evaluate steps taken to address these barriers.⁸⁰

A Co-ordinated Partnership approach

- 8.14 Finally, it is essential that there is a **co-ordinated approach** so as to ensure effective joint working across government in relation to the sexual orientation strategic actions that impact on LGB people.
- 8.15 We recommend the effective **involvement of LGB people** in the design, delivery, monitoring and evaluation of strategic

⁷⁶ *Employment inequalities in an economic downturn*, Employment Research Institute, commissioned by ECNI, 2010, <http://www.equalityni.org/archive/pdf/EconDownturnSummaryReport.pdf>

⁷⁷ As noted in 'Every Child an Equal Child' *Every Child an Equal Child, An Equality Commission statement on key inequalities in education and a strategy for intervention*, ECNI, 2008, <http://www.equalityni.org/archive/pdf/ECkeyinequalities.pdf>

⁷⁸ For example, the Office for National Statistics included for the first time a question on sexual orientation. The survey, published in 2010, covered Northern Ireland and indicated that 0.9% of the Northern Ireland population had identified themselves as LGB. <http://www.statistics.gov.uk/articles/nojournal/measuring-sexual-identity-report.pdf>

⁷⁹ *Section 75 of the Northern Ireland Act 1998, Monitoring Guidance for use by Public Authorities*, 2007, ECNI

⁸⁰ See for example, ECNI *Sexual Orientation Discrimination in NI, the law and good practice*.

actions. The Commission recommends that steps are taken to **build the capacity** of the LGB sector.

- 8.16 In particular, LGB individuals and representative organisations can play a key role in helping employers, service providers and others to implement strategic actions. They are able to provide a source of advice and training which reflects their expert knowledge of issues affecting LGB individuals. In addition the Commission is of the view that in order to challenge fear, ignorance and prejudice which exists in relation to LGB individuals, it is essential that the heterosexual individuals are able to positively interact with LGB individuals.
- 8.17 It is important that the LGB sector has the resources and to support and enable it to bring forward such proactive initiatives. In addition, building the capacity of the sector, will help it to proactively engage with local councils and other community planning partners, in the event that the proposed community planning framework is developed and implemented.
- 8.18 It is also essential that the particular needs of LGB people in local communities are addressed through new community plans.

Sexual Orientation Strategy

- 8.19 As regards the design and delivery of the proposed Sexual Orientation Strategy, in addition to the above mentioned critical factors which underpin the successful delivery of actions to promote LGB equality, we make the following recommendations.

Vision

- 8.20 The Commission recommends a strong vision statement with a clear reference to the creation of a society where people of different sexual orientations are entitled to the full enjoyment of all human rights, and a society that promotes equality of opportunity for LGB people and ensures that they are supported, understood, valued and respected.

Guiding principles

- 8.21 The Commission recommends that a number of guiding principles underpin the draft strategy and action plan; principles based on the **Yogyakarta Principles**.

8.22 The Yogyakarta Principles⁸¹ reflect the application of binding international human rights law to issues of sexual orientation and gender identity. These principles set out in detail the rights of individuals of different sexual orientation and gender identities as well as making clear the obligations on states in order to realise those rights. Rights include rights to equality and non-discrimination, the right to work, the right to education without discrimination, the right to the highest attainable standard of health and the right to freedom of opinion and expression.

- commitment that the Yogyakarta Principles will be used to inform and guide the implementation of the Strategy;
- a focus on **positive action measures** to counter disadvantage and opportunities to better promote equality of opportunity for LGB individuals.

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⁸¹ Yogyakarta Principles http://www.yogyakartaprinciples.org/principles_en.htm