

The background of the page is split into two main color sections: a vertical orange band on the left and a solid blue band on the right. The orange band features faint, overlapping symbols, including a large female symbol (a circle with a vertical line and a cross) and a large male symbol (a circle with a vertical line and a triangle).

Equality Commission

FOR NORTHERN IRELAND

Eliminating Sexual Orientation Discrimination in Northern Ireland

Short Guide - Financial

A guide for the financial sector 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 of premises (including land), the provision of education and the exercise of public functions. The Regulations also cover 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 financial sector, particularly in relation to insurance and pensions and is one of a series of sector specific guides produced by the Commission. Other guides in the series cover areas such as Education, Health and Social Care, Hospitality, and Housing.

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 and their implications 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 web site along with the sector specific short guides at www.equalityni.org.

Background

Lesbian, gay, and bisexual people often face unacceptable prejudice in their everyday life. Gay men and lesbians (particularly gay men) expect to be discriminated against in the provision of financial services and often there is a reluctance and anxiety about declaring one's sexuality when applying for a mortgage or insurance (Stonewall¹).

The legislation makes it unlawful for service providers to provide goods, facilities and services on less favourable terms on grounds of sexual orientation.

¹ The Equalities Review, Sexual Orientation Research Review, Stonewall 2007

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.

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 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, which only 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 favourable 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 other has committed an unlawful act under the Regulations.

Discrimination and civil partners

The Civil Partnership Act 2004 enables same-sex couples to obtain legal recognition of their relationship by forming civil partnerships. The effect is to make the status of 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 the right to a survivor's pension.

Civil partners are 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 if the service is being offered to married persons in similar situations.

The Civil Partnership Act has had a major impact on the delivery of financial services. For instance occupational or private pension schemes which offer benefits to married partners must offer the same benefits to registered civil partners. If a pension scheme offers benefits to unmarried heterosexual couples who live together, then it should offer those benefits to same-sex couples who live together.

HIV and disability implications

The Association of British Insurers' (ABI) guidance² has brought an end to discriminatory lifestyle questionnaires, automatic requests for HIV tests and increased (loaded) premiums based solely on sexual orientation. Individuals applying for life assurance, critical illness cover or income protection plans have to say if they have been exposed to the risk of HIV infections in the last five years. It is no longer allowable to request HIV tests based on occupation³.

² guidance introduced September 2005 www.abi.org.uk

³ information from gay finance web site www.gayfinance.info

Financial institutions also need to be aware of the Disability Discrimination Act 1995. Individuals with cancer, HIV or multiple sclerosis are deemed to be disabled from the point of diagnosis rather than from the point the condition has some adverse effect on their ability to carry out normal day-to-day activities. For further information please refer to the Commission's website www.equalityni.org or contact the Enquiry line 028 90 890 890.

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 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 Regulations give the following examples of facilities and services covered by the legislation:

- access to/use of a public place, which members of the public are permitted to enter;
- accommodation in a hotel, boarding house or similar establishment;
- **financial services; banking, insurance, grants, loans, credit or finance;**
- facilities for entertainment, recreation, or refreshment;
- facilities for education;
- services of a trade or profession;
- services of a local public authority.

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.

Motor insurance

A gay man has applied for motor insurance with an insurance company. During the process of getting a quote he discovers that the policy cover can be extended to include heterosexual partners, married or unmarried. It becomes apparent that this cover does not include same-sex partners.

Under the Regulations, treating individuals less favourably on grounds of sexual orientation could amount to discrimination.

Less favourable treatment on grounds of sexual orientation when applying for life assurance

A gay man is applying for life assurance cover with a well known firm. The application form asks him to declare his sexual orientation and occupation. He finds these questions very intrusive but wants the cover so answers them truthfully.

Following completion of the form he is asked by the insurance company to take an HIV test and a medical which mean him taking unpaid time off work.

The gay man subsequently discovers from a heterosexual friend, who is also applying for life assurance cover with the same company, that after declaring his sexual orientation, he has not been asked to undergo such medicals or take an HIV test. He believes that his treatment is based solely on grounds of his sexual orientation.

Treating individuals less favourably on grounds of sexual orientation is likely to amount to discrimination under the Regulations.

Opening a bank account

A same-sex couple who have recently registered their civil partnership have applied to their local bank for a joint bank account. On receiving the application form to open an account they notice that while the bank asks "applicants to tick a box stating whether they are single/married/widowed/divorced", there is no section for 'civil partnerships'. On clarification with staff at the bank they are told that these are the most up to date forms to be used by prospective customers when opening an account.

Banks, building societies and other financial institutions need to ensure that any documentation, forms, computerised system used for online accounts, or over the phone application process used to open accounts treat civil partners in the same manner as any other group such as married couples.

Excess premiums

A same-sex couple have recently purchased a house together and want life and critical illness insurance to protect the loan and each other in case they die or suffer serious illness before the mortgage is repaid.

As part of the process of gaining such cover, the insurance company asks them to take an HIV test, undergo medicals and complete a lifestyle questionnaire which asks if they are 'gay'.

After going through all of the above, the insurance company advises them that their application was accepted subject to an additional premium. They believe that the 'loaded premium' is based on grounds of their sexual orientation; this is likely to amount to discrimination under the Regulations.

Financial institutions need to ensure that individuals are not treated any less favourably on grounds of their sexual orientation during the process of obtaining insurance.

Mortgage – registering a partner

A same-sex couple who have recently registered their civil partnership wish to amend their mortgage with the building society and set up a joint mortgage in both their names. On approaching the building society they are informed that terms of mortgages can be altered for couples. However it becomes evident that the term 'couples' being used by the advisor only refers to heterosexual couples whether married or unmarried.

Provision needs to be made in the policies of the lender to ensure that their procedures, as well as application forms and other documentation allow civil partners to be treated in the same way as married and unmarried couples.

Other areas covered by the Regulations

The Regulations also apply to organisations relating to religion and belief and 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 any benefits (facilities, services) or against prospective pupils/students as regards terms of admission;
- **public authorities** when carrying out any of their public functions;
- **private members clubs** with 25 or more members in respect of their membership, associations, guests and prospective members and guests.

Anyone involved in the financial/insurance sector 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, advertisements in financial magazines, posters, leaflets, announcements on websites, e-mails, 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 of and management of premises (including land), and private members 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 instructing staff to treat gay couples differently when they apply for insurance cover.

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 financial sector are also employers. Employers are liable for actions of employees carried out in the course of their employment (often referred to as vicarious liability) even if the act is carried out without the employer's knowledge or consent.

For detailed information on the implications of the Regulations please refer to the Equality Commission's guidance 'Eliminating Sexual Orientation Discrimination in Northern Ireland: A Guide on the Provision of Goods, Facilities, Services and Premises' available on the Commission's website at www.equalityni.org.

Good practice for service providers

It is estimated that Britain's 3 million gay and lesbian citizens earn over £70 billion a year⁴. Coupled with the fact that gay and lesbian households have fewer children, it means that this section of the community has a greater disposable income to spend.

Discrimination against gay, lesbian and bisexual people is unlawful and catering for them makes good business sense. It is recommended that all service providers in the financial sector 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 customers and 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;

⁴ Out Now Marketing Consultancy (January 2006) Diva and Gay Times Readers Survey

- establish non discriminatory 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 as part of disciplinary rules;
- 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.

Further information on good practice can be found in 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 on the Commission's website, www.equalityni.org.

Complaints of discrimination

Any complaints relating to discrimination in respect of goods, facilities and services must be made to the county court within six months of the date that the alleged act of discrimination took place.

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:

Telephone: 028 90 890 890 (enquiry line)

Reception: 028 90 500 600

Textphone: 028 90 500 589

Fax: 028 90 248 687

Email: information@equalityni.org

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Sector specific short guides are available in the areas of:

Education
Health & Social Care
Hospitality
Housing

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