

Equality and diversity – a new dimension



Managing equality tensions: a resource paper exploring sexual orientation and religion or belief

Executive summary

The passage into law of the Equality Act 2010 with its core emphasis on nine protected characteristics has brought into focus the possibility of tensions between the interests of people who share different such characteristics. One such tension is between people with the protected characteristics of religion or belief and sexual orientation.

A workshop was held in June 2011 by LSIS (Learning and Skills Improvement Service) to explore these issues. Two further workshops were held in January 2012. This paper presents a summary record of the main inputs to and outcomes from the workshops.

A core part of the workshop was input from a panel of people who were able to present their views and experiences as individuals who shared the protected characteristics of religion or belief and sexual orientation.

There have been a number of related high profile legal cases and these were also discussed during the workshops. This paper summarises these cases together with practical implications for providers.

The capacity to manage equality tensions will increasingly become an important part of the skills set needed by effective equality and diversity practitioners and others. It is hoped that the New Dimensions workshops will be the first of many events to continue the debate and contribute to the development of such skills.

Introduction

The passage into law of the Equality Act 2010 with its core emphasis on nine protected characteristics has brought into focus the possibility of tensions between the interests of people who share different such characteristics. These “equality tensions” and the need to resolve them have become one new and standard part of the equality and diversity environment. They occur in many contexts including the further education sector.

Recent research and much anecdotal evidence suggests that equality tensions within the sector that can sometimes be acute are between people with the protected characteristics of religion or belief and sexual orientation.

LSIS recognises that sector staff and learners need support to play an effective role in managing and resolving equality tensions. They may be inhibited from doing so because of a fear of inadvertently unlawfully discriminating, because of uncertainty about how to go about it, or because they have yet to think through this aspect of equality and diversity.

The “Equality and diversity – a new dimension” workshops, held in June 2011 and early 2012, provided an opportunity to explore these issues. Two further workshops were held in January 2012.

The workshops

The workshops provided a platform for discussion and exploration. They brought together a panel that highlighted the views and experiences of those who personally share both the protected characteristics of religion or belief and sexual orientation and who, therefore, have managed the tensions in their own lives. It offered insights into how the possible tensions between these two protected characteristics can be managed. It began to identify how those who have different views and beliefs can, nevertheless, make the journey to equality and diversity together.

This paper presents a summary record of the main inputs to and outcomes from the workshops.

A new equality landscape

In force from October 2010, the Equality Act 2010 (the Act) brings together, streamlines and strengthens previous equality legislation. The Act identifies nine ‘protected characteristics;’ aspects of identity that are protected from discrimination, harassment or victimisation. These are:

- Race
- Disability
- Gender
- Gender reassignment
- Age
- Sexual orientation
- Religion and belief
- Pregnancy and maternity
- Marriage and civil partnership

This widening of protection creates a more complex equality 'landscape'.

The Act also introduces a new public sector duty, which came into force from April 2011. This duty replaces previous duties to promote race, disability and gender equality, and requires providers to have due regard to the need to:

- eliminate discrimination, harassment and victimisation
- advance equality of opportunity for people who share a protected characteristic
- foster good relations between people who share a protected characteristic and people who do not share it.

This public sector duty is extended to cover 8 of the 9 protected characteristics of the Act (marriage and civil partnerships only applies to the first 'arm' of the duty, namely to eliminate discrimination, harassment and victimisation).

Having '**due regard**' means deliberately and consciously thinking about all three 'arms' of the above duty when planning, delivering and evaluating services. It involves ensuring that equality issues influence design and decision-making activities as employers and providers of education and training.

Fostering good relations involves tackling prejudice and promoting understanding between people who share a protected characteristic and others.

Working with differences

A feature of the workshops was that its two facilitators took and explained their different positions with regard to religion or belief and sexual orientation. They opened the events by each making a brief position statement, Dr Christine Rose as a heterosexual woman and committed Christian and Phil Barnett as a gay man and an atheist. They reflected on how their positions influence their approaches to sexual orientation equality and equality on the grounds of faith. In doing this they modelled the key workshop theme – the possibility and value of working with and respecting difference, finding common ground, and working, from different positions, for shared equality objectives.

Panel transcript

A core part of the workshop was the panel comprising Rabbi Mark L Solomon, Interfaith Consultant for Liberal Judaism and Rev Sharon Fergusson, Chief Executive of the Lesbian and Gay Christian Movement.. Mark and Sharon were able to present their views and experiences as individuals who shared the protected characteristics of religion or belief and sexual orientation. They modelled the fact that is central to understanding this particular equality tension – that many individuals are lesbian, gay or bisexual *and also* hold a religion or belief. They work at resolving the tensions that may arise from these characteristics within their own personalities and lives. They exemplify the possibility of successfully managing and resolving these tensions – sometimes with difficulty, but nevertheless, successfully. Their experience acts as a rejoinder to the over easy default tendency to think about these two protected characteristics as inherently incompatible, separate and different. They are not necessarily so. Holding this in mind and working with it is one key to the effective management and resolution of this equality tension.

What follows is an edited version of the comments of both panel members followed by a brief section that emphasises key points from each.

The organisers wished to include a Muslim speaker in panel membership. Their failure to do so, despite their efforts, means that a vital perspective is missing. Efforts to include a lesbian or gay Muslim speaker at future events of this kind will be intensified.

Key points

Mark: Speaking as a Jew, the issue of religious freedom is vital to us. The experience of Jews as a minority, and particularly in modern times was one of the foundations of religious equality legislation as an important principle in our society. We constantly experience the need for the protection of religious freedom and protection against discrimination. This is a very real issue for many Jews encountering casual or less casual anti-semitism.

Speaking as a Liberal Jew, there is a need to recognise that the Jewish community contains a diversity of views and cultures, and this includes diversity in relation to issues around sexual orientation. Often we find within the Jewish community things are presented as though, “this is the Jewish view” to which all Jews subscribe. Typically it will be the view of Jonathan Sacks the Chief Rabbi, who is the orthodox Chief Rabbi. He does not represent or recognise Liberal Judaism as a valid form of Judaism and does not speak for Liberal Jews on any issue, unless of course, we happen to decide we agree with him on something.

There are several Jewish denominations or movements within British Jewry of which Liberal Judaism in religious terms is the most radically untraditional and constitutes about 10% of all Jewish movements.

I am originally from Australia and grew up in a traditional but not strictly orthodox family and as I was growing up I became increasingly more passionately interested

in Judaism and the life of the synagogue. By the age of 14 I knew I wanted to be a rabbi. Around the same time I started to become aware of my sexuality. But whereas one characteristic in my life was very protected, that is, my religious identity, the whole sexuality side of things was not at all protected. It was protected in a different way, in that it had to be kept hidden and repressed.

We are capable of repressing things to an almost limitless degree. Growing up I kept my sexuality as repressed as possible from myself and others. That caused huge inner conflict and pain and many young people have similar experiences. Religiously I was becoming more orthodox. One “advantage” of the orthodox community for me, or so I thought at the time, was that young men and women did not date. Marriages were arranged, so I hoped that the community would sort things out for me in this way. After many twists and turns I left the ultra-orthodox way of life and came to Britain and completed my rabbinic studies in a more modern orthodox college in London. While I was there, on my own, far from home, my sexuality began to bubble up and became unignorable. In my mid- twenties I found I could not keep running away. I had to grow up and face things. This was painful. In orthodox Judaism being gay is off limits. This is not so much the case now in 2012 as it was in 1989, but it is still the case that if a young man studying to be a rabbi comes out that will be the end of his career. There was no one I could talk to. I became depressed. Fortunately I heard of Rabbi Lionel Blue, who was the first rabbi here to come out. I spoke to him. He put me on a path to healing and acceptance of myself. He enabled me to have a vision of a different kind of life.

Judaism is very family orientated. The first biblical commandment is to be fruitful and multiply. Establishing a family is central to what Judaism is all about. The orthodox Chief Rabbi, Jonathan Sacks says that having children is central to living an ethical

life. In Jewish families you are brought up to know that your purpose in life is to give your mother grandchildren. This may be an even bigger issue for Jewish lesbians than for gay men.

Some people who come out are rejected by their parents and community. This leads to great suffering. I was blessed because pretty much everyone I came out to was fine. It healed those relationships. They were broken because I had been hiding and now I could stop and bring myself forward. Coming out to my orthodox rabbi in Sydney was slightly different. I had a very deep and long standing relationship with him. I realised that no one had ever come out to him before. He did not know how to deal with it. His response was, “get married anyway.” I am sure he would now understand that that is terrible advice. One of the crucial steps for me in coming out was reading two books which changed my way of thinking. One was a book of Jewish feminist theology by an American scholar, Judith Plaskow, which showed me that Judaism did not have to exist within the boundaries I had always understood. She showed me a broader, radically different way of understanding God, the Torah and what it means to be Jewish. At the same time I read “The Colour Purple” which presented a deeply feminist, humane view of human beings and our relationship to God. These two books showed me a different way of being. They showed me that the traditional ways of thinking about God and religion were not the only ones. There were other, legitimate and, for me, better possibilities that could allow freedom, liberation and growth and healing.

This showed me that I could still be a Jew, and a rabbi, and be gay – but not within the orthodox framework. So, in Jan 1992, I went to speak with Rabbi Jonathan Sacks, the orthodox Chief Rabbi, and came out to him. He was very kind, but quite shocked. He let me go very gently. And I began to look for another place to work, and I returned to study. A Liberal congregation sought me out to be their rabbi. Up until

that time there had not been a lot of thinking about gay issues in Liberal Judaism. There was a generally benign atmosphere. But I was the first openly gay rabbi in the Liberal movement in the UK. And we began to discuss gay issues, and the need for commitment ceremonies for same sex couples. This had been a deeply divisive issue in the Reform movement. When the Liberal movement discussed it I was relieved to find that from my colleagues, it was simply a matter of justice and equality. It was something that should happen. So we began to create a policy, a liturgy and a service for same sex couples. Then the government caught up with Civil Partnerships. We have now gone beyond talking about commitment ceremonies and campaign for full marriage equality.

Campaigning in Scotland for full marriage equality, Liberal Judaism has worked in partnership with the Quakers and Unitarians. In response to the Scottish government consultation on marriage equality the orthodox Jewish communities made it clear that they do not support gay marriage and will not perform gay marriages in their synagogues. But they also made it clear that they did not object to, nor would they seek to stop, other denominations from pursuing this course. I find that a very mature and significant position, and one that should give us pause for reflection on how such tensions as exist can be managed.

We are looking at potential clashes between protected characteristics – gay rights and religious rights. I am deeply convinced on the basis of secular, civil society, it will be perfectly possible for religious rights and those of sexual minorities to coexist without clashes. This will involve a certain mindset of making room for each other. This does not come easily. We need to go through a process to understand what room other people need.

At the moment, a difficult issue that keeps arising is “cures” for homosexuality- so called “reparative therapy.” A recent article

in a Jewish newspaper argued that while it may not always work, people should be free to try it, or to recommend it. And, anyone who says they should'nt on principle is behaving in a fascist way. This argument is deeply morally flawed because the evidence shows that these therapies are abusive and useless. There needs to be a rational debate about this so that we can negotiate space for one another. But, to accuse gay people who have been persecuted historically of behaving in a fascist way as if there is some oppressive consensus in favour of gay rights strikes me as an absurd idea when gay people still face discrimination and worse in so many parts of the world.

Sharon: I want to pick up where Mark left off . There are three main things we are looking at today. One is how you handle conflict, tackling tensions and fostering good relationships. Handling conflict is often done individually. And we are starting with the assumption that there is going to be conflict between faith and sexuality. We assume that if you are gay you cannot be a person of faith. And if you are a person of faith you are not going to like lesbian, gay or bisexual people. If we follow through that assumption, then I am a walking contradiction. I am an ordained pastor, with a very deep personal relationship with my God. And, I am also a lesbian.

People like me have to go through this kind of conflict. We are told we can't be people of faith if we are to be lesbian or gay. We are told we have to make a choice. A lot of people come to me really struggling with this. They know they can't stop being gay. Sometimes they have tried. And they also want to maintain their relationship with God. Some people end up living in two closets. When they are with their gay friends they are in the faith closet. When they are with their faith friends they are in the closet about their sexual orientation. This creates a huge amount of dissonance.

I never had to come out to my mother. She has always accepted my sexual orientation. But she cannot understand at all where I get my faith from and why I wanted to be ordained. Coming out of the closet as a Christian to her was very difficult and we had many arguments about it. So we need to be aware of these sorts of internal conflicts that many of our colleagues and students experience.

We often hear people of faith justify their homophobia on the basis of scripture – “the bible says...” In fact the bible does not condemn homosexuality. The word “homosexual” only came into the dictionary in around 1940 as a medical term. The concept of homosexuality was not part of the culture within which the Bible was written. Neither were same sex loving relationships. So the bible can no more condemn homosexuality than it can the use of a washing machine. Silence is not condemnation. Having said that, there is every reason why we should work to find ways of addressing sexual orientation equality that try to take into account some people's deeply held faith and convictions.

But, we will not change people's minds by making theological arguments and quoting scripture to and fro. Some people say that it has been church tradition for two thousand years – marriage between one man and one woman. But, this is not true. Right up until the 19th century male priests were getting married to each other. Marriage only between one man and one woman is a very modern concept. It is a social rather than a religious construct.

I had a wonderful conversation with three young women who held strong religious convictions in a south London college recently. They just kept repeating to me that sex between people of the same gender is wrong because the bible says it is. So I asked them what they meant by this. Is hand holding wrong? They did not think it was, because it did not count as sex. Is cuddling wrong? No, again, because it does not count as sex.

Ultimately they thought that sex was only heterosexual intercourse – which of course, then must mean that same sex sexual relations do not count as sex and are therefore fine. But, they were not able to change their views. So, these conflicts and tensions cannot be tackled by way of argument of this kind.

For me change will only come about through the examination of life experience. Stereotypes will only be challenged and dismantled by engagement with the experiences of others. I recently did an exercise with a group of prison officers. I asked half of them to write down words that they thought described lesbians. The other half wrote words that described Christians. The first half wrote things like “aggressive,” “domineering,” “man-haters.” The other group wrote “gentle,” “considerate” and “inclusive.” Obviously these are contradictory lists – and yet, I belong on both lists and I can’t and don’t hold these contradictory traits – and the prison officers could see that I did not. So, while I cannot be reduced to my sexual orientation and my faith, in so far as we are looking at these, I can offer the experience of interacting with me as a counterweight to the stereotypes.

I recently received some horrendous, threatening, homophobic emails threatening me with eternal damnation and quoting the bible and telling me I would die because I am a lesbian. The emails were sent from a young person from their place of work. So, I raised it with the employer and we had a meeting. The young woman apologised to me. She told me that she had never met a lesbian before and certainly not a lesbian who is a Christian. I am sure she has, but just did not know. All she had heard from her church and family was that being gay is evil and needs to be stamped out. In meeting me she realised that we are human beings with all the usual feelings and concerns. We do the washing up and the shopping just like everyone else. It is only by being able to enter into dialogue that change is possible.

I can recommend a book by George Cooper, an evangelical Methodist minister, called “The Reluctant Journey.” He spent many years believing that homosexuality was wrong and could be “cured.” Then he got to know some gay people. And God took him on a journey that he did not really want to go on. He had to relook at his positions. He rethought his whole belief and he now runs a local group for gay Christians in the Essex area and he has come a long way, with great difficulty, and this was possible because of dialogue with gay people.

Going back to Mark’s comments about “be fruitful and multiply” - there are lots of ways in which we can be fruitful and multiply. It does not have to involve giving birth to children. Whenever two people come together in a loving relationship they produce something that is greater than the sum of two parts. There is something very fruitful about what we contribute to our world and society in many different ways, and this cannot be reduced to childbirth - wonderful though that is.

I do not remember a time when I did not have a relationship with God. This drove my family to distraction. I knew from a very early age that I was called to some sort of ministry. But I did not follow that through in my early years. I didn’t come out as a lesbian until I was twenty three and then went through a period of time of what I called “church hopping.” I never had any issues with my sexuality. I was so secure in my love of God and in God’s love for me that that was never an issue. But I was very aware that it was an issue for others. I never wanted to put them in a position where they told me that they could not let me become a member of the church. It was only when I found the Metropolitan Community Church that I realised that here was somewhere I could follow my calling. So I left my career as a forensic psychologist and went to be trained as a minister. I do a lot of campaigning work now. If I go to meetings in the LGBT

community I always wear my dog collar. When I go to any faith based meetings I wear a tee shirt saying "Lesbian and Gay Christians." That message about complementarity rather than conflict is vital.

Questions

To Mark *You spoke about the differences between orthodox and Liberal Judaism. If an orthodox Jew is gay and comes out, are they excommunicated? And how do you support them?*

Mark The short answer is no! My parents did not reject me when I came out. They may not have been positively delighted at the time to have a gay son but it led to a more positive, deeper and open relationship between us. I am a great believer in coming out. Within Liberal or Reform families there would be general acceptance of people coming out. In Liberal Judaism we do not regard the Torah – the five books of Moses – to have been actually dictated by God to Moses. We do not see all the laws as God given. We see them as man-made, except for fundamental ethical principles, like "love your neighbour as yourself" – which is also in Leviticus.

In the ultra orthodox community which constitutes about 5/10% of the Jewish population it would be much more difficult to come out. If someone did so they might be ostracised within the community and be edged out. There are, especially overseas, organisations that specifically support ultra orthodox Jews to come out, for example, in New York and in Israel.

To Mark and Sharon

How can we change people's preconceptions about the relationship between religion and sexual orientation?

Sharon: In changing perceptions knowledge is very important. I suggest if you go to websites like LGCM's, or

"Inclusive Church" that will give you an idea of how you can argue authoritatively from an Anglican perspective. There is a need to educate ourselves so we can share information and challenge the ideas of others.

But there is a limit to the power of logic in these matters! We need also to share our common human experiences - of love, of friendship, of our common need for support – to begin to break down heavily entrenched preconceptions and stereotypes.

Mark: We need to recognise progress when we see it. My comments about the "live and let live" approach of orthodox communities in Scotland to gay marriage is a case in point.

In Jewish theological writing there is a saying: *Both these and those are the words of the living god (God)*. This challenges us to listen to others, even when we disagree with them deeply and even if what they say annoys or hurts us. This is difficult, but we need to model the values and principles of respectful coexistence in the ways we argue for it.

How can we frame this discussion within the wider context of respectful professional relationships?

Sharon: This is always difficult. We need to get away from the perspective of "if I am right, then you are wrong." We like "either-ors." If we can begin to think that you can hold your opinion, and your opinion is just as valid as mine, even though I may disagree, then respect becomes possible. We should strive to be able to say, just because it's different doesn't mean it's wrong. I will accept and respect your opinion so long as it does not harm me and I hope that you can do the same. If we can just listen to others and accept difference then respect can follow. When we enter into discussions we need to model what we want to come back to us.

Early intervention and prevention seems vital. Do you go into schools with your work?

Sharon: Unfortunately, not a great deal is done in schools. Anything outside of the curriculum struggles to be heard. Having said that LCGM has put together a resource for teachers working with 11-13 age group looking at faith and sexuality. It can be accessed on www.faithandsexuality.co.uk That looks at the three Abrahamic faiths and what they have to say. The focus of it is to try and reduce homophobic bullying in schools. All the exercises are in word docs so can be adapted.

Mark: There are still challenges. Recently a controversy broke out at a Jewish school in London about a lesson where in the context of a discussion about orthodox attitudes towards homosexuality a slide was shown to do with an organisation called JONAH – Jews Offering New Alternatives to Homosexuality. Its an American organisation that promotes so called reparative therapy. This was disturbing to some of the teenagers in the lesson and it became public and caused a row in the community. One of the things it led to is a number of out gay Jewish people who are alumni of that school and others intervening with the school although not getting very far with that. But just this last few days they have been making videos - you may have heard of the project called “It Gets Better” - where people make videos that reassure young people who have been subject to bullying or homophobia or who are depressed about their sexuality that it does get better – that you can grow up and live a happy and fulfilled life as a gay person. So, there are still big challenges. But, its much easier now for young people to discuss these issues. I find a lot of hope in that.

Key points

Reflections on Mark’s thoughts

- The importance of recognising difference within religious traditions is emphasised by Mark’s explanation of the place of Liberal Judaism within British Jewry. Those differences are the basis for significantly different positions on sexual orientation equality within organised Judaism as a whole.
- The dynamic nature of the attitudes of religious traditions to sexual orientation equality is illustrated by Mark’s explanation of how views have evolved and changed in different congregations, sometimes in response to direct challenge and sometimes in response to the spirit of wider social change
- The view taken by Liberal Judaism that the Torah is not to be seen in a literal sense as being dictated to Moses by God, but as religiously informed manmade laws – open to thought, interpretation and change – is central the Liberal Judaism’s ability to take its supportive and inclusive approach to sexual orientation equality
- The key transformative role of individuals coming out as lesbian or gay is emphasised as is the need many lesbian and gay people within religious communities have for the support of their religious communities
- Mark notes that a shared approach to sexual orientation equality has enriched, and to some extent proceeded from interfaith dialogue and cooperation – in this case between Liberal Judaism, the Quakers and the Unitarian Church

- The importance of modelling respect in responding to homophobia is stressed as a way of breaking out of a cycle of mutual assured disagreement.
- Sharing human experience rather than relying only on logic or theological dispute is recognised as a powerful way of gaining traction in arguments and enabling parties to move beyond fixed positions.

Reflections on Sharon's thoughts

- Sharon notes that it is easy to assume that there will be conflict between religion and belief and sexual orientation, but that is not always the case; different views and interpretations of scripture are held by people within a single religion such as Christianity. A number of Christians, for example, do not see any conflict between faith and sexuality

People can interpret scripture differently. However, we are unlikely to change peoples' minds by quoting scripture – Sharon believes that the 'lived experience' is a more powerful means of challenging and breaking down stereotypes and preconceived views

- People will not necessarily hold the same view of faith and sexual orientation throughout their life. As their understanding of their faith grows, for example, so might their viewpoint on issues change. People of faith will recognise that they are on a journey of understanding in relation to their faith. Sharon notes that it is only by entering into respectful dialogue that change is possible

Case Law to consider

At the time of writing this resource, there have been no significant cases in the post-16 education sector that involve tensions between sexual orientation equality and equality on the grounds of religion and belief. However, there have been a number of high profile legal cases outside the sector that have practical implications for providers.

Ladele v London Borough of Islington

The case

Lillian Ladele was employed as a registrar of births, deaths and marriages for the London Borough of Islington. She asked to be excused from conducting civil partnership ceremonies, as she believed such unions were in breach of her Christian faith. Two gay members of the council's staff complained, saying that she should be required to comply with the council's dignity at work policy

The decision

An employment tribunal (ET) initially upheld Ladele's claims of religious discrimination and harassment. However, the Employment Appeal Tribunal (EAT) overturned the decision, saying that the council was entitled to require all registrars to perform a full range of services. The Court of Appeal (CoA) upheld the EAT decision.

Ms Ladele has now taken her claim to the European Court of Human Rights. No decision has been made at the time of writing this briefing,

McFarlane v Relate Avon Ltd

The case

Gary McFarlane was a counsellor for Relate Avon, which provides relationship-counselling services. In line with its equal opportunities policy and code of ethics, Relate offers its services to both same-sex couples and heterosexual couples. McFarlane refused to work with same-sex couples where sexual issues were involved, as he believed that same-sex sexual activity was sinful. Relate initiated its disciplinary procedure and, following a disciplinary hearing, McFarlane was dismissed.

The decision

The ET dismissed McFarlane's complaints of discrimination and harassment. It pointed out that Relate would have treated any counsellor, who for reasons unrelated to Christianity, refused to provide counselling to same-sex couples and therefore unwilling to abide by Relate's equal opportunities policy, any differently. The EAT upheld the ET decision, saying that Relate's actions were a proportionate means of achieving a legitimate aim, namely to provide non-discriminatory services

Mr McFarlane has also taken his claim to the European Court of Human Rights, under a joint claim with Ms Ladele. No decision has been made at the time of writing this briefing,

Gabriels v London borough of Lambeth

The case

Mr Apelogus-Gabriels was dismissed for distributing a range of biblical texts to a work-based prayer group and other staff working at his organisation. The texts were considered to be homophobic.

The decision

The ET dismissed Gabriels claim of direct discrimination, saying that it was his conduct that harassed others, rather than his religious belief, and it was for this reason that he was dismissed

Mitchell v Strathclyde Fire and Rescue

The case

A Christian fire-fighter was disciplined for refusing to hand out fire service leaflets at a Gay Pride march, claiming that such an action was against his religious beliefs. Strathclyde fire and rescue service reached a settlement before an employment tribunal considered the case. The fire service withdrew its disciplinary sanctions and apologised to Mitchell.

The decision

This is not 'case law' as such, as the case was settled out of court. However, the case raises the issue of what might and might not be justified as a proportionate means of achieving a legitimate aim. In this case, the fire service would probably have had difficulty in convincing a tribunal that handing out leaflets at a march was a crucial and integral aspect of a fire-fighter's job role and responsibility.

Hall & Preddy v Bull and Bull

The case

Peter and Hazelmary Bull were Christian hoteliers who said that they had a policy that unmarried couples could not share double rooms. Their hotel website said: 'We have few rules but please note that out of a deep regard for marriage we prefer to let double accommodation to heterosexual married couples only.' When Martyn Hall and Steve Preddy arrived at the hotel they were refused a double room. The two men explained that they had entered into a civil partnership but were still refused a room. They subsequently sued the Bulls, saying that this refusal discriminated against them. The Bull's contested the claim, saying that their double bed policy applied to all unmarried couples regardless of sexual orientation.

The decision

The judge at Bristol County Court ruled that the hotel had directly discriminated against Hall and Preddy on the grounds of their sexual orientation and awarded them compensation. The court considered the rights of the Bulls to hold their beliefs, but recognised that they used their premises for a public service. Hall and Preddy were entitled to be treated in the same way as a married heterosexual couple.

Johns and Johns v Derby City Council

The case

Eunice and Owen Johns were registered as foster carers with Derby City Council and applied to be considered for short-term / respite fostering. They were advised to withdraw their application due to the Council's concerns that the Johns' views on homosexuality did not meet the requirements of their National Minimum Fostering Standards.

The decision

The Equality and Human Rights Commission (EHRC) applied to intervene in the case. While the EHRC acknowledged the right of prospective foster parents to hold a religion, they considered that the manifestation of the beliefs of the Johns would disproportionately infringe on the rights of a child to equality on the basis of his or her sexual orientation. At no stage was it suggested that people holding Christian beliefs were automatically unsuitable as foster carers or adopters. The religion of the prospective couple was not an issue; rather, it was their disapproving views of homosexuality that was the issue. The same response would be applied to a couple with no religion but who expressed disapproving views of homosexuality.

First case for hate crime on the grounds of sexuality

The case

Three Muslim men from Derby were the first people in Britain to be convicted of inciting hatred on the grounds of sexuality under the Criminal Justice and Immigration Act 2008, which came into force in March 2010. This Act makes it an offence to stir up hatred on the grounds of sexual orientation.

The men distributed leaflets calling for gay people to be killed as part of a campaign to publicise a protest against a Gay Pride parade due to be held in Derby on July 2010

One leaflet, entitled "Death Penalty?" showed an image of a mannequin hanging by the neck from a noose. A second leaflet showed the word gay laid out as an acronym to read "God Abhors You". A

third, called "Turn or Burn", showed an image of a person who appeared to be burning in a lake of fire

The Crown Prosecution Service said it had had to establish not only that the leaflets were insulting and abusive, but also that they were threatening and had been distributed with intent to stir up hatred.

The decision

The three men were found guilty of hate crime and given prison sentences.

Practical implications for providers

- Many of the above cases are concerned with how a person's religious belief is compatible with their professional roles and responsibilities rather than the validity or otherwise of that belief
- Employers should carefully consider all employee requests related to religion or belief. However, requests should be balanced by the business needs of the organisation. Providers need to be aware that they can justify some types of discrimination if they can robustly demonstrate that their decision is a proportionate means of achieving a legitimate aim.
- Services offered by a provider must be free from discrimination. It is reasonable to expect all staff to deliver services in a non-discriminatory way
- People are concerned about the freedom to hold their religious beliefs. It is helpful to make clear that all are entitled to hold their religious beliefs providing conduct at work or during learning doesn't discriminate or harass others

- Employees are free to hold religious beliefs but employers are entitled to require them to comply with their policies. An employer's commitment to an equal opportunities policy can, in appropriate circumstances, objectively justify any indirectly discriminatory treatment
- Providers should have clear and explicit policies including, for example an E&D policy and a dignity at work policy, and these should be well-known and robustly implemented
- Providers should ensure that their policies are not discriminatory. This highlights the importance of a robust means of carrying out equality impact assessments.
- While people are entitled to hold extreme opinions which others may find unpleasant or even repugnant, they are not entitled to distribute those opinions in a threatening manner intending to stir up hatred against gay people.

Good practice case studies

Stoke Newington School and Sixth Form College is cited as an effective practice case study on the Ofsted good practice website:

<http://www.goodpractice.ofsted.gov.uk/>

The school is located in the centre of London with a wide range of ethnicity and faiths, and with students who are refugee and asylum seekers.

The case study is one of a number that illustrate some of the principles involved in creating an LGBT - friendly culture and ethos of inclusion. Although some of the case studies are schools, including the case study of Stoke Newington, there are some useful insights and common principles for how to tackle potential or actual tensions for organisations in the Learning and Skills Sector. Critical success factors include:

- Vision, drive and commitment of **senior leaders**
- **Embedding E&D within the curriculum**, for example positive portrayals of LGB athletes, musicians, artists and scientists. A desire by staff not just to excel in teaching and learning, but to positively influence students to become responsible citizens in society
- **Displays and organisation-wide diversity festivals** and celebration events, for example lgb&t history month
- A whole-organisational stance on **homophobic language** – zero tolerance and a recording of all incidents
- **Governor** support, and a recognition among governors that supporting initiatives to foster good relations are a part of their

responsibilities under the Equality Act 2010

- Strategies to continually **raise awareness** and maintain profile, for example newsletters, website briefings and surveys
- The use of external role models to provide the '**lived experience**'. For example, a group of students of Black Caribbean heritage were frequently using homophobic language at Stoke Newington School and Sixth Form College. The School arranged for a Black lesbian rap artist to perform to the whole school, and then work with this group of students
- **Staff training**, for example training on how to identify, record, report and tackle incidents
- A variety of mechanisms for students to **report bullying and harassment**, including a confidential and anonymous reporting system, a secure text messaging system and designated staff that students know they can approach who will deal with worries and concerns in confidence
- **Persistence**. One organisation, for example, identified hostility, resistance and negative responses by both staff and students, but persistence with strong senior staff support enabled such attitudes to be tackled over time
- Establishing **support groups** such as an lgb&t student support group
- Ensuring the **voice** of staff and students of faith, and lgb&t staff and learners have an audible 'voice' in improving practice
- Ensuring behavioural and disciplinary **policies and procedures** explicitly identify E&D issues, for example modifying behaviour referral forms to include reference to homophobic language

Key messages

The following text summarises delegates responses during a round table discussion at the end of the workshops to gather key messages. They are duplicated here in no particular order of priority:

- Training for staff is very important, so that all are aware and understand the issues, actions and requirements
 - Everyone needs to understand their role and responsibility in challenging and championing equality and diversity, and fostering good relations. This, in part, relies on high quality staff training and in part, this relies on a meaningful staff and student induction that makes these issues explicit
 - People don't read policies – we need to have imaginative and creative learning activities to make communication of our policies real
 - Greater effort needs to be made to get the 'voice' of staff and students of faith, and gay, lesbian and bisexual staff and students heard and acted on
 - Making links and forming relationships with community groups can be hugely beneficial
 - We need to think of imaginative ways to raise issues and find out about and discuss real life scenarios
 - E&D managers need to think about who they can work with as 'equality champions'
 - Sexual orientation equality, and equality on the grounds of religion and belief should be made explicit within key policies **and** documents:
- ground rules arising from these policies should explicitly inform the student charter, job descriptions, staff and student handbooks
- The 'lived experience' where staff and students are encouraged to 'walk in your shoes' is a very powerful aspect of driving this agenda forward. The 'lived experience' is more powerful than facts, figures, or reasoned arguments
 - Strong policies, well communicated, and robustly implemented, are essential for dealing with tensions
 - We need to recognise that our perception of potential tensions may be far greater than reality, and that itself can cause barriers to driving forward this agenda
 - Be prepared to listen, to keep calm, to try and find common ground, and to model the response you want others to take
 - Mutual acceptance and respect for diversity is everyone's responsibility, and not just the E&D manager. Senior management and governor engagement is critical
 - We need to avoid looking at protected characteristics in isolation. The reality is that most people don't fit neatly into one 'box' and rather than trying to fit people into boxes or give them labels, we need to value people holistically
 - People with a protected characteristic are a valuable resource that we should be using much more. Engagement with students with a protected characteristic should be an explicit part of our learner voice, for example. We need to fully utilise

opportunities to get the voice of gay, lesbian and bisexual staff and students, staff and students of faith, and staff and students who have both protected characteristics heard

Conclusions

The new equality landscape creates potential tensions between people who share different protected characteristics. Such tensions, while rare, can damage good relations within an organisation. Part of a provider's responsibility, in meeting the new public sector duty, will be to develop a confident and informed approach to tackling equality tensions. The capacity to manage equality tensions will increasingly become an important part of the skills set needed by effective equality and diversity practitioners and others.

This will be an important contribution to meeting that part of the general duty placed on public authorities by the Equality Act 2010 to foster good relations between people with protected characteristics. It will also support meeting the other parts of the general duty – to eliminate discrimination and advance equality

Managing such tensions as may arise between religion or belief and sexual orientation will very often not be as intractable as it may at first appear – especially if we keep in mind that the characteristics are often shared within the lives of many individuals and that views and positions within groups are often both varied and dynamic

The key challenge explored by the workshops was how to live and work peacefully and respectfully with differences that coexist and that cannot be negotiated away. The need is to find ways of establishing common ground on which to work while respecting differences and

allowing them to persist without that deflecting from the goal of creating learning organisations that are genuinely inclusive.

We hope that the New Dimensions workshops will be a contribution to that journey – the beginning rather than the end of a conversation that needs to continue and intensify.

We look forward to the possibility of future events of this kind in different parts of the country so that these issues can be explored as widely as possible within a sector context

Dr Christine Rose & Phil Barnett

Further resources and sources of information

For further information on the Equality Act see the LSIS briefing 'The New Equality Act 2010 – what does it mean for the learning and skills sector?

www.lsis.org.uk

For further information on research in the sector on managing equality tensions between sexual orientation equality and equality on grounds of religion or belief, access the LSIS Excellence Gateway. From September 2011 it will be hosting the sector guidance – *Managing the interface: sexual orientation and faith* – published in 2010 by LLUK and The Forum for sexual orientation and gender identity in post school education.

Useful websites:

The Equality and Human Rights Commission: -
[www.http://www.equalityhumanrights.com/](http://www.equalityhumanrights.com/)

Stonewall:
<http://www.stonewall.org.uk/>

Faith and Beliefs in FE:

<http://www.fbfe.org.uk/>

Liberal Judaism

<http://www.liberaljudaism.org>

Lesbian and Gay Christian Movement

<http://www.lgcm.org.uk>

Imaan – Muslim LGBT

<http://www.imaan.org.uk>

Safra Project for Muslim LGBTQ Women

<http://www.safraproject.org>