

## **Chapter Eight Sexual Orientation**

The Equality Act (Sexual Orientation) Regulations 2007 contain measures prohibiting discrimination on grounds of sexual orientation in the provision of goods, facilities and services, education, the use and disposal of premises and the exercise of public functions. They provide protection from sexual orientation discrimination that is similar to the protection provided on grounds of race and sex.

The regulations came into force on 30<sup>th</sup> April 2007.

The Employment Equality (Sexual Orientation) Regulation 2003 protects against discrimination on the grounds of sexual orientation in employment, vocational training, promotion, and working conditions and came into force on 1<sup>st</sup> December 2003.

### **How we will meet these duties**

The Wealden Equality Scheme represents a comprehensive scheme which identifies our overall aim: to ensure that all our services and employment opportunities are provided with equity and fairness to everyone. The Council is committed to preventing discrimination in the provision of our services and employment opportunities against people because of their sexual orientation. Chapter One of the Wealden Equality Scheme sets out our equality principles, values and approach to equality and diversity. The Service Delivery and Employment Action Plans reflect our aim, priority objectives and details the actions that we will take to meet all of our equality duties.

### **Guidance on the measures to outlaw discrimination**

Source: Guidance provided by Department for Communities and Local Government (<http://www.communities.gov.uk/index.asp?id=1510066>)

### **Discrimination on grounds of sexual orientation**

The Regulations prohibit discrimination on the basis of a person's:

- actual sexual orientation;
- the sexual orientation he/she is thought to have and/or;
- the sexual orientation of someone with whom he/she is associated.

Sexual orientation means an individual's sexual orientation towards:

- people of the same sex as him or her (gay or lesbian);
- people of the opposite sex (heterosexual);
- people of both sexes (bisexual).

It does not include transsexuality which is related to gender and is covered in the employment context by sex discrimination legislation (and Gender Equality Duty).

### **Direct and indirect discrimination**

The Regulations outlaw both direct and indirect discrimination on the grounds of sexual orientation.

Direct discrimination takes place when someone is treated less favourably than other people are/would be treated. This is where there is no material difference in the relevant circumstances and the reason for the treatment is the sexual orientation the victim holds or is thought to hold, or that of someone associated with them.

Indirect discrimination occurs when provisions, criteria or practices that are applied generally, result in people of a particular sexual orientation being put at a disadvantage, as compared to people with others, and these provisions, criteria or practices cannot be objectively justified. This applies even if the negative impact is unintentional.

### **Discrimination and civil partnerships**

The Regulations do not change the existing legal position regarding where and how civil partnerships can be formed.

Civil partners will thus be able to bring a discrimination claim on grounds of sexual orientation against a provider of goods and services who denies them access to a benefit or service being offered to a married person in a similar situation. Similarly, where mixed-sex unmarried couples are offered a particular service or benefit, it would be expected that these should also, where appropriate, be made available to same-sex couples who are not in a civil partnership.

### **Victimisation**

The Regulations also protect against victimisation. This means that it will be unlawful for a service provider or public authority to treat a person less favourably because they:

- Have brought, have intended to bring, or intend to bring, proceedings under the Regulations;
- Have given, have intended to give, or intend to give, evidence or information in connection with such proceedings or any investigation;
- Have alleged, have intended to allege, or intend to allege, that a person contravened the Regulations;
- Have done, have intended to do, or intend to do, any other thing in connection with the Regulations;
- Suspect them of doing the above things.

### **Discriminatory practices**

The Regulations make it unlawful for a person to adopt or maintain a discriminatory practice. This is a policy, requirement or condition which would be likely to result in unlawful discrimination if applied to persons of a particular sexual orientation, but where there is not an individual victim of the practice in question.

### **Discriminatory advertisements**

The Regulations make it unlawful to publish an advertisement for goods, facilities, services or premises that can reasonably be understood to indicate the intention to act in a way that is unlawfully discriminatory.

It is not unlawful to include reference to sexual orientation in an advertisement, as long as it does not specify any restriction on that basis.

### **The Council as an employee**

Under the Regulations employers are liable for the actions of their employees and agents, whether or not they know about or approve of the act.

It is a defence however for an employer to prove that he or she took reasonable steps to prevent breaches of the Regulations.

### **Goods, facilities and services**

The Regulations will require providers of goods, facilities and services to ensure that they are not treating their customers unfairly on the grounds of sexual orientation, just as they are already required not to treat their employees unfairly on these grounds.

The regulations apply to all forms of goods, facilities and services. Discrimination is unlawful whether or not a charge is made for the goods, facilities or services.

### **Premises**

The regulations prohibit discrimination on grounds of sexual orientation when disposing of premises, i.e. when selling or renting property.

The Regulations also make unlawful any discriminatory behaviour by a manager of premises on account of the sexual orientation of a tenant or other occupier, or someone who is associated with them.

### **Public authorities and public functions**

The Regulations make it unlawful for the Council to discriminate when exercising public functions. This includes the non-legislative work of local authorities.

Public authorities must ensure that all their services are provided in a way that no-one entitled to use any service is disadvantaged in receiving it by reason of sexual orientation.

Further information can be sourced from the Department for Communities and Local Government (<http://www.communities.gov.uk/index.asp?id=1510066>)