

Sexual Orientation Discrimination In goods, facilities & services.

Legal protection against discrimination on the grounds of sexual orientation



Overview

Since 30th April 2007, the laws on discrimination related to sexual orientation have been extended into new areas beyond just the employment sphere. Now lesbian, gay, bisexual and heterosexual people have rights in matters such as health, education, housing, adoption, goods, facilities and services. This factsheet covers goods, facilities and services, to give you an overview of what the extended laws might mean to you in practice as a consumer, traveller, patient or parent. As of 1st October 2010, all existing equality legislation was consolidated into the Equality Act 2010 ('The Act'). Provisions relating to equality in relation to services provision (as it is now described in 'The Act') is contained within Part 3 of 'The Act'.

For information on sexual orientation discrimination in the workplace, please see our factsheet 'Sexual Orientation – How the law protects against discrimination based on sexual orientation', part of the Employment Law series.

Rights and wrongs

'The Act' makes it unlawful for service providers providing services to members of the public to discriminate against anyone because of sexual orientation. The discrimination could take the form of refusing to provide a product or service, or of providing something of a lower quality or on inferior terms compared to that provided to others (of a different sexual orientation).

It is irrelevant whether the services are offered for money or not.

This means that you can sue organisations and service providers if they discriminate against you. 'The Act' applies to the private and public sector, although there are some exceptions.

Direct/Indirect Discrimination/Victimisation

Direct discrimination - It is unlawful to treat a person less favourably because of sexual orientation. In order to succeed in a claim of direct discrimination, you must show:

- That you have been treated less favourably because of sexual orientation
- That you can compare your treatment to someone (actual or hypothetical) with similar characteristics to yourself save for sexual orientation
- That you were subject to disadvantage or detriment as a result of that treatment.

There is no need to show motive or intention behind the discriminatory treatment as it is accepted that discriminatory treatment can be unconscious. Further, it does not matter if the discriminator shares the sexual orientation of the individual being discriminated against.

'The Act' requires that 'like must be compared with like', so where, for example, a gay man has been refused a job because of his sexual orientation, his comparator could be a heterosexual person who is in all other respects in the same position as him. An individual can point to a hypothetical comparator. A useful test is the 'but for' test: for example, would I have been treated the same way 'but for' the fact that I am gay, or have a gay friend etc?

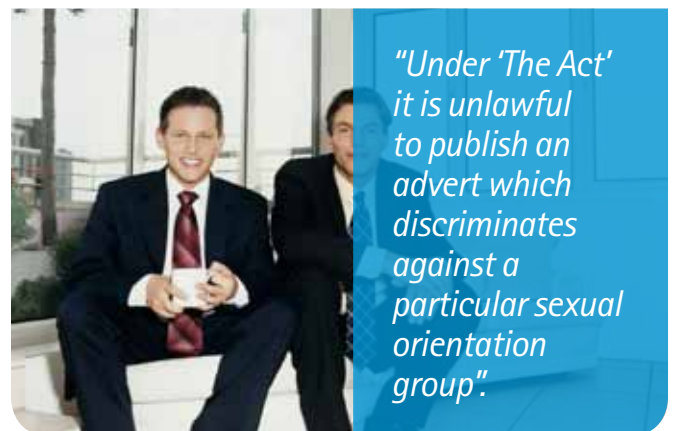
An obvious example of direct discrimination would be a hotel owner refusing to provide a double room to two men. Another would be if the Maitre d' of a restaurant asked a same-sex couple to leave because of showing affection to each other, where a heterosexual couple behaving in the same way would not be asked to leave. Direct discrimination cannot be justified.

Indirect discrimination - 'The Act' provides that a person also discriminates if an arrangement or feature associated with the employment (technically known as a provision, criterion or practice (PCP)) is applied or would be applied equally to all employees, but it:

- Puts a sexual orientation group at a particular disadvantage when compared with another group
- Puts you at that disadvantage; and
- Is not a proportionate means of achieving a legitimate aim.

The PCP must have been applied universally, for example a PCP that all candidates must be married.

Whether or not the PCP puts one sexual orientation group at a particular disadvantage as compared with another will often depend upon the 'pool' of people considered. The employer must satisfy the Tribunal that the PCP can be objectively justified. If this is established, a discrimination claim will fail.



"Under 'The Act' it is unlawful to publish an advert which discriminates against a particular sexual orientation group".

Victimisation

It is unlawful to treat a person unfavourably because they have been involved in a complaint of discrimination under 'The Act'. Discrimination by way of victimisation occurs when you are treated unfavourably because you have done, you are about to do, or you are suspected of doing a 'protected act'. A protected act includes:

- Bringing proceedings against the discriminator or any other person under 'The Act' or the 2003 Regulations; or
- Giving evidence or information in connection with proceedings against the discriminator or any other person under 'The Act' or the 2003 Regulations; or
- Doing anything in relation to the discriminator or any other person under or by reference to 'The Act' or the 2003 Regulations; or
- Making allegations that the discriminator or any other person has committed an act which contravenes 'The Act' or the 2003 Regulations. This would include raising a grievance of sexual orientation discrimination.

So for example, if you have made a complaint against a hotel about sexual orientation discrimination and are later treated unfavourably for doing so, you should be covered by 'The Act'. A protected act must be done in good faith.

'The Act' recognises the fact that discrimination may not be overt. At the outset, it is up to you to show facts from which the Court could infer a discriminatory act. The burden of proof then shifts to the defendant to provide a non-discriminatory explanation for the treatment complained of. If the defendant cannot do so, then a court must normally find that the treatment was discriminatory.

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Who will benefit?

Clearly, existing social attitudes and the heterosexual 'norm' mean that the main beneficiaries of the legislation will normally be lesbians, gay men and bisexuals. These groups are most likely to face discrimination based on their sexual orientation. However, the laws apply equally to all sexual orientations, so they also cover the more limited situations in which straight people may be targeted for less favourable treatment based on their sexuality – being refused entry to a gay nightclub, for instance.

Importantly, the definition of unlawful direct discrimination extends to protect you from receiving less favourable treatment not based on your own sexual orientation, but on someone else's. So, for example, if you are treated less favourably because of your son's homosexuality, or because your daughter is a (straight) campaigner for gay rights, this would also be unlawful.



"It is unlawful to treat a person unfavourably because they have been involved in a complaint of discrimination under 'The Act'".

Perceived sexual orientation is also covered. Less favourable treatment based on the mistaken assumption that a person is a lesbian because of their appearance, for example, would also be unlawful.

Exclusions for organisations on religion or belief

'The Act' states that it is not unlawful for certain religious organisations to restrict their membership, participation in their activities, their provision of goods, facilities and services, and the disposal of property (subject to a limited exception), to a person on the grounds of sexual orientation.

The benefit of this exclusion extends only to organisations whose purpose is to practice, promote or teach a religion or belief, whose sole or main purpose is not commercial. The restrictions they impose must be necessary either to comply with the doctrine of the organisation, or to avoid conflict with the 'strongly held religious convictions' of the religion's followers.



"As well as providing a legal remedy to individuals, these Regulations may, in time, bring about a more fundamental shift".

How do I bring a claim and what will it achieve?

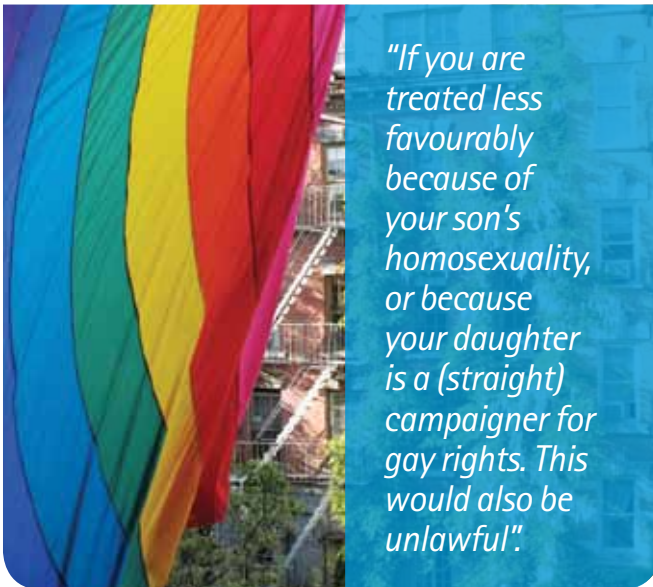
Breach of 'The Act' (technically known as 'breach of statutory duty') constitutes a tort (or civil wrong). This means that claims must be brought in the County Court. The time limit for bringing a claim is six months less one day from the date of the discrimination (or last in a series of acts of discrimination). The court has the discretion to allow a claim that is out of time, but you should not rely on this discretion.

The Court can award both financial and non-financial remedies – respectively monetary compensation or an injunction that 'rights the wrong'.

'The Act' makes it possible to ask questions by means of a statutory questionnaire, to find out more information to support a claim of discrimination. The questionnaire can be served before starting a claim, so long as it is within six months of the date of the discrimination, in the correct form and served using one of the permitted methods.

It might be particularly useful to serve a questionnaire if you are not sure whether to bring proceedings and feel you need more information to decide.

If the organisation you are claiming against does not respond to your questionnaire within eight weeks, or if their response is inadequate, a Court can draw 'adverse inferences' from this. It is possible for a Court to conclude that discrimination did occur in these circumstances, so there is a real incentive for the organisation to provide a full and honest response to the questionnaire.



In what situations will the law be relevant to me?

'The Act' is likely to be of particular relevance in relation to the following areas:

- Access and use of a place open to the public - for example a gym, swimming pool or hotel accommodation
- Financial facilities such as mortgages or insurance, subject to a limited exemption relating to consideration of actuarial data
- Facilities for recreation and refreshment
- Access to professions or trades (e.g. in relation to home improvements) and travel.

This is not a complete list. Any situation where less favourable treatment relates to sexual orientation may be relevant. Refusal by a retailer to offer gift list services in relation to a civil partnership ceremony, for example, would almost certainly also be covered. Associations covered by 'The Act' (subject to various criteria such as size of membership and type of activity undertaken) must also apply the same non-discrimination principles, in terms of access to membership, benefits and facilities.

Premises, adoption and education

Different sections in 'The Act' deal with providing services in relation to areas such as disposal of premises, adoption and education. In the context of premises, discrimination on the basis of sexual orientation is unlawful in the hiring or letting of premises (for example as a venue for a civil partnership ceremony) subject to limited exceptions. It is also unlawful in relation to the terms and benefits offered to occupiers or tenants (subject to certain exceptions).

In private and public education, it is unlawful to discriminate against pupils on the basis of their sexual orientation. This applies to both the admission policy and treatment at the school, and discrimination due to the pupil's own or, for example, their parent's sexuality. However, particular provisions to meet special needs arising from sexual orientation are permitted.



Adverts


Under 'The Act' it is unlawful to publish an advert which discriminates against a particular sexual orientation group. So for example, it is unlawful to advertise a concert which is open to straight people only. The Equality and Human Rights Commission has the power to challenge and punish those responsible for discriminatory adverts.




Contact Us

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